

A DIGEST OF INDIAN LAW CASES:

CONTAINING

HIGH COURT REPORTS, 1862-1900,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA
1836-1900,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

JOSEPH VERE WOODMAN,

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[3 Moore's L. A., 435

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[6 B. L. R., 575
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[1 B. L. R., S. N., 20
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[2 B. L. R., P. C., 10
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[5 B. L. R., 254, 254 note
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11 B. L. R., Ap, 28
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See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE.

SALE BY AUCTION.**Agreement not to bid against one another at—**

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

[I. L. R., 18 Bom., 342

Auctioneer—Agent bidding “kutcha-pucca”—Usage of trade—Custom—Condition of sale.—An agent of the defendants made at an auction-sale a bid for certain goods: this bid was not at the time accepted by the auctioneers, but was referred to the owners of the goods for approval and sanction, the agent agreeing to such reference. The conditions of sale contained no clause stipulating for such procedure. Previous to any reply being received by the auctioneers from their principals, the principals of the agent bidding refused to acknowledge the bid of their agent. In a suit brought by the auctioneers to recover a loss on a re-sale of the goods, the plaintiffs set up a usage of trade, whereby it was alleged that the bidder at such a sale was not at liberty to withdraw his bid until a reasonable time had been allowed for the auctioneers to refer the bid to the owner of the goods. The only evidence on this point was that of an assistant to the firm of the plaintiffs, who stated “that such an arrangement had never been repudiated.” Held that the condition of sale containing no clause to the effect of the usage claimed, and there being no sufficient evidence that the usage was so universal as to become part of the contract by operation of law, there was no contract between the parties, and therefore that no suit would lie. *MACKENZIE LYALL & Co. v. CHAMROO SINGH & Co.* . . . I. L. R., 16 Calc., 702

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1. ACT VIII OF 1835.

1. ——— Procedure—Sale of under-tenure—Beng. Reg. VII of 1799.—Sales of under-tenures under Act VIII of 1835 for arrears of rent were not

SALE FOR ARREARS OF RENT

—continued

1 ACT VIII OF 1835—continued

required to be according to the procedure laid down in Regulation VII of 1793 but according to the procedure prescribed by s 2 of Act VIII of 1835
MONOSHREE v. ANDOOL HOSABIN 7 W R, 297

2 ———— *Effect of sale—Right of purchaser—Itamame tenure*—When rights and interests in a talukh were sold for arrears of rent under Act VIII of 1835 the purchaser obtained no power to destroy the itamame tenure
SOOBULCHUNDER PAUL v. ATTUR ALI 11 W R, 32

3 ———— *Right of purchaser—Incumbrances*—A sale of an under tenure under Act VIII of 1835 passed only the right title and interest of the judgment debtor and did not void the incumbrances created by the old tenant
MANICK CHUNDER DOSS v. DWARKANATH DOSS [2 May, 503]

4 ———— *Right of purchaser Act XI of 1859 s 52—Semble*—The purchaser of a holding in a khas mehal sold under Act VIII of 1835 could claim the position of privileges accorded by ss 37 and 2 of Act XI of 1859 to purchasers of permanently settled estates or of estates sold in districts not permanently settled sold for arrears of revenue
KYLASH CHUNDER SBAHA v. SHYENOMYKE DOSSER 7 W R, 318

5 ———— *Incumbrances*—Howladari tenure—The plaintiff held certain lands in talukh Q under a howladari pottah. Q was sold for arrears of rent under Act VIII of 1835 and purchased by the defendant. After purchase, the defendant disposed the plaintiff from his lands on the

chaser of a tenure under Act VIII of 1835 did not necessarily acquire it free from all incumbrances. Case remanded for trial of the genuineness of the plaintiff's pottah
JASIMUDDIN v. MANSUR ALI [6 B L R, Ap, 149 15 W R 11]

Contra **DWARKANATH DOSS v. MANICK CHUNDER DOSS** 8 W R, 197

RAMJEEBUN CHOWDRY v. PEARY LALL MURDUL [4 W R, Act X, 50]

6 ———— *Right of purchaser—Attachment—Tender of arrears*—In a suit to set aside a sale in execution of a decree for arrears of rent due up to Aghran 12 the plaintiff who

but as a sezawal was legally in possession. The plaintiff never tendered the arrears for which the sale was made. Under Act VIII of 1835 no separate attachment of a mehal or notification of sale in the mofussil is necessary in order to render the sale valid. In this case, not the rights and interests of the defaulter but the tenure itself, passed for the arrears

SALE FOR ARREARS OF RENT

—continued

1 ACT VIII OF 1835—concluded

due upon it. Attachment by the appointment of a sezawal is no bar to a sale for arrears due before such attachment
FORBES v. PROTAP SINGH DOODRA [7 W R, 409]

7 ———— *Beng Reg VII of 1799—Tappa right Extinguishment of—Semble*—A tappa right is annihilated by a sale held under Act VIII of 1835 and s 15 Regulation VII of 1799
KENUT BEEKE v. RAHATOONISSA [7 W R, 243]

2 DEFAULTERS

8 ———— *Disabilities of defaulters—Purchase—Beng Reg VII of 1819—Sale of patta*—A defaulter cannot under Reg VIII of 1819, purchase a patta sold on account of his default to pay the patta rent either in his own name or in that of any other person
MAHOMED NASSER v. KISHEN MOHUN GOYER W R, F B, 92

9 ———— *Purchase—Sale of patta*—Not merely recorded shareholders but all actual defaulters (such as joint pattidars) are prohibited from being purchasers of patta
GOUREE KOMUL BHUTTACHARJEE v. RAJ KISHEN NATH [5 W R, 106]

10. ———— *Purchase—Right to sue—Sue by another defaulting co-sharer to set aside sale*—A suit by a sharer to set aside a sale having been dismissed on the ground that plaintiff being a defaulter the suit would not lie. Plaintiff brought a second suit to claim possession of his share of the dar patta talukh on the ground that the sale must be inoperative inasmuch as the purchaser as co-sharer was also a defaulter. Held that until the sale was set aside plaintiff was not in a position to claim possession of his share.
GOUREE KOMUL BHUTTACHARJEE v. RAJ KRISHNA NATH 14 W R, 389

11. ———— *Purchase—Suit by other defaulters to set aside sale—Joint owners—Dar-pattidar—Constructive trust*—Of three joint owners of a dar patta one held a 4 annas share and the third an 8 annas share. Default having been made by all three in the payment of the rent the pattidar brought a suit and obtained a decree for

shareholder declined paying his share and when the sale took place he became the purchaser of the dar

Held on second appeal that, the sale having taken place as much through the default of the plaintiffs as through the default of the defendant the former had no equity against the latter and that therefore the

SALE FOR ARREARS OF RENT

—continued.

2. DEFAULTERS—concluded.

suit should be dismissed. *RAM LOH MOOKERJEE v. DEBENDER NATH CHATTERJEE*

[I. L. R., 8 Cal., 8

S. C. *RAM LALL MOOKERJEE v. JODUNATH CHATTERJEE* 9 C. L. R., 337

12. ———— Defaulter for period later than that causing the sale—*Suit for damages by dar-patnidar*.—When a patni is sold for default on the part of the patnidar in paying his rents, a dar-patnidar who has paid his rent to the patnidar for the period to which the default relates may sue for damages, although himself a defaulter for a later period. *MADHUB ANUND MOITRO v. JOY KOOMABEE BIDEE* 5 W. R., 201

3. UNDER-TENURES, SALE OF.

13. ———— Beng. Act VIII of 1865—*Application of Act*—*Chota Nagpore*.—Bengal Act VIII of 1865 applied to the district of Lohardugga in Chota Nagpore. *GOBIND RAM v. BHUPAL SINGH* [10 C. L. R., 76

14. ———— s. 30—"Proceeding"—*Sale*.—A sale under Bengal Act VIII of 1865 was a "proceeding" within the meaning of s. 30 of that Act. *DWARKANATH SEIN v. CHUNDER MOHUN MITTER* 12 W. R., 326

15. ———— Act X of 1859, s. 105—*Sale of transferable tenure*—*Act X of 1859, s. 151*.—The plaintiff sued to bring a transferable occupancy tenure to sale in satisfaction of a decree for arrears of rent, by cancellation of an order passed under Act X of 1859 relating to the execution of the decree. *Held* that, in so far as the suit sought to set aside the order, it was barred by the provisions of s. 151 of Act X of 1859, and was not admissible by reason of the repeal of the Act: in so far as, irrespectively of the order, the suit sought to recover the amount of the decree by the sale of the holding on which the arrear accrued, at the time it was instituted s. 105 of the Act had ceased to be law in these provinces, and could not be cited in support of the claim. *RAM KHILOWAN RAM v. FOX* 7 N. W., 239

16. ———— *Purchase by zamindar at sale in execution of decree of Civil Court*.—A zamindar who had obtained a decree against a registered tenant for arrears of rent was fully justified in proceeding to sale under s. 105 of Act X of 1859, notwithstanding the tenure was purchased subsequently to the date of the above decree at a sale in execution of a decree of the Civil Court. *SURENDRA NISSA v. SAREE DHOOPER* 8 W. R., 384

17. ———— Under s. 105, Act X of 1859, an under-tenure might be sold in execution of a decree, provided there was an arrear of rent adjudged. *SATTRESCHUNDER ROY v. MODHOORODEN PAUL CHOWDHRY* W. R., 1864, Act X, 91

18. ———— *Procedure by proprietor of under-tenure*—*Act X of 1859, s. 106*.—Under s. 106, Act X of 1859, an under-tenure was

SALE FOR ARREARS OF RENT

—continued.

3. UNDER-TENURES, SALE OF—continued.

liable to sale in execution of a decree for arrears of rent for eleven years. Any party wishing to stay the sale, on the ground of his being the proprietor of the under-tenure, had to comply with the provisions of s. 106. *DOORGA PERSAD BOSE v. SREEKISTO MOON-SHEE* W. R., 1864, Act X, 48

19. ———— Beng. Act VIII of 1869, ss. 59, 64—*Procedure*.—Where an under-tenure is sold under the provisions of Bengal Act VIII of 1869 in execution of a decree obtained by the zamindar for rent due to him as the separate proprietor, after batwara of a share of the talukh in which the tenure is situated, the sale is properly conducted, not under s. 64, but under s. 59 of the above law. *SURUT SOON-DUREE DEBIA v. SUMEEROODEEN TALUKHDAR* [22 W. R., 530

20. ———— *Effect of sale*—*Right, title, and interest of debtor*—*Act X of 1859, s. 105*.—In a sale under s. 105, Act X of 1859, only the judgment-debtor's property can pass. *MEAH JAN MUNSHI v. KURUNA MAYI DEBI* 8 B. L. R., 1

21. ———— "Tenure," *Meaning of*—*Non-registration of names*—*Act X of 1859, s. 105*.—By the word "tenure" as used in s. 105, Act X of 1859, is meant not the right or interest of any person in the land, but the holding or the interest which has been created by the lease, and it is the latter which is sold on a sale under s. 105. Therefore where A, at a sale in execution of a decree for debt, bought the right, title, and interest of the holder of a transferable under-tenure, and previous to the confirmation of such sale the zamindar sued the tenant for arrears of rent and obtained a decree, under which he sold the tenure to persons who conveyed it to B, and A, under the circumstances, neither registered the transfer to him nor made any deposit of rent as allowed by s. 6, Bengal Act VIII of 1865,—*Held* that he was not entitled to recover possession from B. *SHAMCHAND KUNDU v. BROJONATH PAL CHOWDHRY* [12 B. L. R., F. B., 484 : 21 W. R., 94

GIRISH CHUNDER MITTER v. JHAKU [12 B. L. R., 488 note : 17 W. R., 352

ANUND LOH MOOKERJEE v. KALIKA PERSAD MISSE . 12 B. L. R., 489 note : 20 W. R., 59

RUGHOOBUR THAKOOR v. SYEPOOLLAH KHAN [23 W. R., 289

BANEE MADHUB BUKSHEE v. RADHA MADHUB MOZOOMDAR 22 W. R., 196

22. ———— *Non-registration of tenants' names*—*Right of person in permissive possession of tenure*.—A sale in execution of a decree for arrears of rent (at an enhanced rate) of a subordinate talukh, which has been obtained against a party who is in possession of the talukh by permission of the owners, but who has no other right or title to it, will not bind those owners, even though their names be not recorded as tenants in the books of the zamindar. *Sham Chand Kundu v. Brojo Nath Pal*

SALE FOR ARREARS OF RENT

—continued

3 UNDER-TENURES, SALE OR—continued.

Choudhry, 12 B L R, 484 distinguished. RENOY KISSEN MUTT & RAM COOMAR SEN

[3 C L R, 231]

23. ————— Non registration of purchase of under-tenure in the landlord's *serishtah*—In a case governed by Act X of 1859, it was held that a person, who had purchased a transferable jote but who did not get his name registered in the landlord's *serishtah* had no *locus standi* against a subsequent auction purchaser of the jote in execution of a decree obtained against the recorded

24. ————— What passes at sale of under-tenure—Growing crops—Beng Act VII of 1869, s 66—At a sale of an under tenure for arrears of rent under s 66 of Bengal Act VIII of 1869, the growing crop standing on the land passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved. ATATOOLLA SIBDAN & DWARKA NATH MOITRY

[1 L R, 4 Calo, 814 4 C L R, 95]

25. ————— What passes at sale of under-tenure—Certificate of sale—B B held 1 anna of a 10 annas in a jumma which had been purchased by B L H and had paid rent to the kutkinadar on such 1 anna share, and had his name registered as owner of such 1 anna share in the *sherista* of the kutkinadar. The kutkinadar having for ob put hat, as the sale certificate related only to the share of B L H, B B's 1 anna share did not pass under such sale. BRUGERUTH BERAN & MOHBERAM BANERJEE

I L R, 4 Calo, 855

26. ————— What passes at sale of under-tenure—Beng Act VIII of 1869, ss 59, 60—In a case where the sale was not an under tenure, but

what passed by the sale was not an under tenure, but

27. ————— Sale in execution of decree under Civil Procedure Code 1869—Beng Act VIII of 1869, ss 59, 60 66—Right of purchaser—In execution proceedings under Act VIII of 1869, whether the property attached is an under tenure or an ordinary leasehold interest, only the

SALE FOR ARREARS OF RENT

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3 UNDER TENURES, SALE OF—continued

right, title, and interest of a judgment debtor can be

CHAND SAHOO & LALLA BISHESHUR DYAL

[L R, 61 A, 47 3 C L R, 561]

28. ————— Beng. Act VIII of 1869 ss 59 60—What passes at

and that the tenure at not pass to the auction purchaser with any incumbrances. GRISH CHUNDER GHOSH & KALER PABA

25 W R, 895

29. ————— Right of mortgagee—Right to notice of sale—Adjudication of title, Suit for—The right title and interest of A in a certain under tenure was sold in execution of a

that the mortgagee having foreclosed the mortgage instituted a suit for possession against A and B and obtained a decree for possession. After this decree, but before C got actual possession B caused the under tenure to be sold in execution of his other decree against A and again became himself the purchaser C, having shortly afterwards obtained possession under that decree. A took possession purchase

s 369, Act VIII of 1869, in which he was successful, and consequently regained possession. In a suit brought by B to set aside those proceedings

[L R, 4 Calo, 438]

S C WATSON & GONESH CHUNDER SAHOO

[3 C L R, 240]

30. ————— Procedure—Setting aside sale—Material irregularities—Civil Procedure Code (Act X of 1877), Ch XIX, ss. 811 847—The procedure to be followed upon the sale of an under tenure is now that prescribed by the Civil Procedure Code. S 811 does not apply only to sales made under Ch XIX of the Code and the sale of an under tenure may be set aside upon any of the grounds mentioned

SALE FOR ARREARS OF RENT

—continued.

3. UNDER-TENURES, SALE OF—concluded.

in that section. *AZIZOONESSA KHATOON v. GORA CHAND DASS* . . . I. L. R., 7 Calc., 163

S. C. AZIZOONESSA KHATOON v. KALLY CHURN SEN . . . 8 C. L. R., 498

4. PORTION OF UNDER-TENURE, SALE OF.

31. ———— *Judgment-debtor in receipt of whole rent—Beng. Act VIII of 1869, ss. 61, 64.*—It is only where the judgment-debtor is in receipt of the entire 16 annas share of the rent that in execution of a decree for rent the under-tenure can be sold. *DWARKA NATH CHAKRAVARTI v. SIVRIDRA NATH CHOWDHURI* . . . 8 C. L. R., 407

32. ———— *Sale under decree obtained by sharer in undivided estate.*—If a decree is given in favour of a sharer in a joint undivided estate for his share of the rent of an under-tenure situate in such estate, he is not allowed by law to put up for sale a portion of the under-tenure. *GOBIND CHUNDER ROY CHOWDHRY v. RAM CHUNDER CHOWDHRY*

[22 W. R., 421]

33. ———— *Act X of 1859, s. 108—Effect of sale.*—Where a sharer in an undivided talukh, after obtaining a decree for money due to him on account of his share of the rent, brings to sale a portion of the tenure corresponding with the share of the rent for which he obtained a decree, the sale has no further effect than any other sale in which the rights of the judgment-debtor are sold. *NUND LALL ROY v. GOOROO CHURN BOSE*

[15 W. R., 6]

PITAMBURREE CHOWDHARAIN v. NOBIN KRISTO MOOKERJEE . . . 18 W. R., 205

34. ———— *Act X of 1859, s. 108—Beng. Act VIII of 1865, s. 4—Sale of under-tenure—Execution of decree for rent.*—A suit by a sharer in a joint undivided estate for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate fell within the provisions of s. 108, Act X of 1859. Where the owner of an undivided estate lets his share to a tenant by giving a pottah and taking a kabuliati, a suit for the rent of such undivided share, treated as a separate and distinct under-tenure, came under the provisions of s. 4, Bengal Act VIII of 1865. *DWARAKANATH CHOKERBUTTY v. DHUN MONEE CHOWDRAIN*

[15 W. R., 524]

35. ———— *Right of purchaser on sale of portion of tenure.*—Where a suit was for rent, and the balances due under the decree were on account of a 7 annas rukhum of a tenure, and the sale-certificate passed the right and interest of the defaulting under-tenant, it was held that Act X of 1859, s. 108, was applicable to the case, and that such right and interest only, and not the whole tenure, became vested in the auction-purchaser. *ARKHIL CHUNDER MOOKERJEE v. CHUNDER COOMAR MITTAR* . . . 22 W. R., 414

SALE FOR ARREARS OF RENT

—continued.

4. PORTION OF UNDER-TENURE, SALE OF—continued.

36. ———— *Beng. Act VIII of 1869, s. 64—Right of purchaser—Effect of sale.*—The Full Bench decision in *Sham Chand Kundu v. Brojonath Pal Chowdhry*, 12 B. L. R., 484: 21 W. R., 94, by which the right of a purchaser in execution of a rent-decree prevails over that of an earlier purchaser, has no application to the case of a sale under Bengal Act VIII of 1869, s. 64, which provides for the sale, not of the tenure, but of the right, title, and interest of the judgment-debtors. *LUCHMUN RAMONOOJ DOSS v. RAM HUREE ROY* . . . 22 W. R., 67

37. ———— *Landlord and tenant—Sale of a portion of a tenure—Beng. Act VIII of 1869, ss. 59, 60—Co-sharers—Parties.*—A portion of a tenure cannot be the subject of a sale under s. 64, Bengal Act VIII of 1869, so as to give the purchaser the same privilege as he would acquire by the purchase of an entire tenure under ss. 59 and 60. A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale A, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to oust A. In a suit by A to recover possession of his half share of the tenure on the footing of his purchase. *Held* that he could not make out a title to the half tenure with the privilege attaching to the purchase of an entire tenure under ss. 59 and 60 of Bengal Act VIII of 1869; and that, as it appeared that the mortgagor, whose rights and interests only were thus sold, was only one of several co-sharers, in the absence of the co-sharers, who were not parties to the suit, A was not entitled to the relief he sought. *REILY v. HUB CHUNDER GHOSE*

[I. L. R., 9 Calc., 722: 12 C. L. R., 398]

See SHAMCHAND KUNDU v. BROJONATH PAL CHOWDHRY . . . 12 B. L. R., 484

38. ———— *Right, title, and interest of registered shareholder in tenure—Effect on joint shareholders.*—Where a judgment-debtor was alone registered in the serishtah of the zamindar as owner of a tenure, but it appeared that his two brothers who were joint in estate with him were entitled to an equal share with him in the tenure, but that the judgment-debtor was the manager; and when it appeared that the zamindar, being only entitled to a share in the zamindari, had obtained a decree against the judgment-debtor alone for arrears of rent, and in execution thereof proceeded to sell his right, title, and interest under s. 64 of the Rent Act,—*Held* that, as the judgment-debtor represented his brothers, and as they were equally liable to pay the amount of the decree upon the principle set out above, the latter were not entitled to recover their share of the tenure which the auction-purchaser had obtained possession of in execution of the decree against the judgment-debtor. *Doolar Chand Sahoo v. Lalla*

SALE FOR ARREARS OF RENT

—continued.

4. PORTION OF UNDER-TENURE, SALE OF
—continued.

Chabeel Chand, L. R., 11 I. A., 47, and Bissessor Lall Sahoo v. Luchmessur Singh, L. R., 6 I. A., 233, commented on. JEO LALL SINGH v. GUNGA PERSHAD I. L. R., 10 Calc., 998

30. ————— *Sale of right, title, and interest of a registered tenant—Effect of sale of a tenure in execution of a decree for arrears*

defendant No 1, who was a joint owner of the talukh with the plaintiffs, in execution thereof fraudulently caused the disputed property to be sold, and defend-

SALE FOR ARREARS OF RENT

—continued.

4. PORTION OF UNDER-TENURE, SALE OF
—continued.

that for some years they and the said defendants have been paying rent to the landlord and obtaining separate rent receipts; that the defendants Nos. 2

and interest, not only of the registered tenant, but also of the unregistered co-owners whom he represented. *Jeo Lall Singh v. Gunga Pershad, I. L. R., 10 Calc., 998, followed. NITAYI BEHARI SAHA PARAMANICK v. HARI GOVINDA SAHA*

[I. L. R., 28 Calc., 677]

40. ————— *Sale of a jumma in execution of a decree for rent obtained against one of the heirs, of the last recorded tenant, from whom the landlord chose to accept rent separately and who was not recorded in the landlord's serishtas—Effect of such a sale.*—An heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor who was the recorded tenant. The plaintiffs sued to recover possession of their share of certain rent-paying lands on the allegation that they were entitled to a one-third share of these lands by inheritance from the last recorded tenant, and another one-third share by purchase from one of his heirs; that the defendants Nos. 2 and 3 were entitled to the remaining one-third share;

absolute owner of the 12 annas gauti, and had acquired the right, title, and interest of the last registered tenant in the 4 annas share. The result was to place him in the position of holding the 16 annas gautidari right as against the under tenants, who were bound to pay rent to him *de facto* gautidar. *JOGENDBO CHUNDER GHOSH v. SINDA KALKA* [24 W. R., 313]

42. ————— *Sale of immovable property—Beng. Act VIII of 1869, s. 65.*—Where one co-sharer obtains a decree for money due to him on account of his share of the rent of an

SALE FOR ARREARS OF RENT —continued.

4. PORTION OF UNDER-TENURE, SALE OF —continued.

insufficient to satisfy the decree, that the judgment-creditor can proceed under s. 64 or 65, Bengal Act VIII of 1869, to seize and sell the immoveable property of his debtor. *SARODA PRASAD GANGOOLY v. TARUOK CHUNDER BHUTTACHAJEE*

[2 C. L. R., 325]

43. ———— *Landlord and tenant—Sale of portion of under-tenure—Suit for arrears of rent.*—There is nothing in s. 64, Bengal Act VIII of 1869, which necessarily leads to the conclusion that under that section a share of an under-tenure cannot be sold so as to render the sale binding upon the judgment-debtor; and there is no substantial difference between the sale of a portion of an under-tenure under that section and under the Civil Procedure Code. Where therefore a plaintiff, who was the owner of a share in a zamindari, had obtained a decree against X, who held a talukh in such zamindari, for arrears of rent due in respect of such share, and in execution of such decree brought a share of such talukh to sale, corresponding with his share in the zamindari, and himself became the purchaser; and where such plaintiff subsequently instituted a suit against X, who was also the owner of a howla and nim-howla under the said talukh, for arrears of rent due in respect of the share of the talukh so purchased by him; and where it appeared that the sale at which the plaintiff became the purchaser was afterwards confirmed; and that he had obtained a sale certificate,—*Held* that such suit was not liable to be dismissed merely on the ground that the plaintiff had brought a share of an under-tenure to sale in execution of a decree for arrears of rent under s. 64 of Bengal Act VIII of 1869, and had thereby acquired nothing by such purchase, there being nothing in that section to support such a conclusion. *Gobind Chunder Roy Chowdhry v. Ram Chunder Chowdhry*, 22 W. R., 421, and *Reily v. Hur Chunder Ghose*, 1 L. R., 9 Calc., 792, discussed and explained. *ASHANULLA KHAN BAHADUR v. RAJENDRA CHANDRA RAY* I. L. R., 12 Calc., 464

44. ———— *Act VIII of 1869, ss. 26, 59—Suit for rent—Landlord and tenant—Effect of sale in execution of a decree for rent.*—Where two persons, B and I, were registered tenants, and on B's death no one was registered in his place, and a suit for arrears of rent was brought against the widow and the executors of the sole surviving registered tenant,—*Held* in view of s. 26 of Act VIII of 1869 (B.C.) that the zamindar was not bound to look for his rent beyond the representative of the surviving registered tenant, and that the entire tenure passed by the sale in execution of a decree for arrears of rent obtained against the representative of the surviving registered tenant. Where the sale proclamation distinctly set out that the sale would be held according to the provisions of s. 59 of Act VIII of 1869, and the property advertised was the tenure and the property sold was the tenure,—*Held* that the mere insertion of a statement that the sale was of the rights and interests of the judgment-debtor would not have the effect of limiting the sale

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4. PORTION OF UNDER-TENURE, SALE OF —concluded.

to such rights and interests and not extending to the tenure itself. *MAHOMED SIKKAR v. GIRISH CHUNDER CHOWDHURI* 2 C. W. N., 251

5. EFFECT OF SALE.

45. ———— *Dissolution of relation of landlord and tenant—Patni tenure.*—The sale of a patni dissolves the relationship of landlord and tenant between the zamindar and the patnidar. *BROJONATH SINGH ROY v. BHUGODUTTY DASSEE*

[1 W. R., 133]

46. ———— *Unregistered tenant.*—A zamindar has a perfect right to bring a tenure to sale for arrears of rent without regard to the rights of the new tenant while he is yet unregistered. *NOBEEN KISHEN MOOKERJEE v. SHIB PERSHAD PATTUOK*

[9 W. R., 161]

Upholding on review decision in . . . 8 W. R., 96

47. ———— *Registered tenant affected by sale.*—A zamindar need not ordinarily look beyond the register for sale of a tenure of a registered defaulter. *FORBES v. PRATAP SINGH DOOGUR*

[7 W. R., 409]

48. ———— *Liability of tenant for rent after sale—Non-registration of transfer.*—Where a patni tenure is sold under a decree against the tenant, he is not liable for any rent which may accrue afterwards, notwithstanding the transfer may not be registered. *GOPEEKISTO GOSSAMEE v. RAM COMUL MISTRY* Marsh., 212

S. C. RAM COMUL MISTRY v. GOPEEKISTO GOSSAMEE 1 Hay, 563

See contra, HOROMOON MOOKERJEE v. RAM COOMAR MITTER 1 W. R., 225

49. ———— *Right of inamdars in respect of debts for arrears of rent.*—The paramount rights of Government in respect of debts due to the Crown are not transferred to alienees (such as inamdars) of Government revenue. If an inamdar fails to recover his rents by any of the special processes provided in the regulations, and is obliged to go into the Civil Court and obtain a decree for arrears, the sale of the land in execution of such a decree has the same effect (and no more) as a sale of land in execution of a decree for any other debt. *BALAJI NARAYAN KOLATKAR v. RAMCHANDRA GANESH KELKAR* 11 Bom., 37

6. INCUMBRANCES.

50. ———— *Subordinate tenures, Effect of sale on—Beng. Reg. VIII of 1819—Sale of patni talukh.*—On the sale of a talukh under the provisions of Regulation VIII of 1819, all subordinate tenures, such as oust talukhs, howlas, nim-howlas, did not necessarily lapse: it depended very much upon the terms of the pottah or grant under

SALE FOR ARREARS OF RENT —continued.

■ INCUMBRANCES—continued

which the original talukh was created DWARKA-NATH DOSS BISWAS : MANICK CHUNDER DOSS

[9 W. R., 200

51. ——— Tenures created by defaulter —*Beng. Reg VIII of 1819—Sale of patni tenure*—A sale under Regulation VIII of 1819 did not *ipso facto* annul all tenures created by the defaulting patnidar, but the purchaser, if he thought proper, could avoid them MADHUSUDAN KUNDU v. RAMDHAN GANGULI

[3 B. L. R., A. C., 431; 12 W. R., 383

52. ——— Tenures created by patnidar—*Patni tenure—Act X of 1859, s 105—Beng Reg VIII of 1819*—The provisions of Regulation VIII of 1819 with respect to the sale of under-tenures for arrears of rent being applicable to sales under decrees for rent made under s 105, Act X of 1859, *Held* that, where a sale had been effected of a "patni talukh" under that section, it must be presumed, in the absence of evidence to the contrary, that the tenure was one transferable by sale, and upon the creation of which it was stipulated

Regulation VIII of 1819, and the effect of the sale was to annul all incumbrances created by the patnidar BRINDABAN CHUNDER SIRCAR CHOWDHRY v. BRINDABAN CHUNDER DEY CHOWDHRY

[13 B. L. R., 408; 31 W. R., 324

L. R., 1 I. A., 178

S C in High Court, BRINDABAN CHUNDER CHOWDHRY v. BRINDABAN CHUNDER SIRCAR CHOWDHRY

[8 W. R., 507

53. ——— Decree as to liability to enhancement—*Beng Reg. VIII of 1819—Right of purchaser—Suit for enhancement of rent—Patni tenure*—The purchaser of a patni talukh at a sale for arrears of rent under Regulation VIII of 1819 sued for a *kabuliat* at an enhanced rent. The former patnidar had brought a similar suit, and the Court had declared that the rent was not liable to enhancement. *Held* that the purchaser was bound by that decree TAPASPRASAD MITTRA v. RAM NERING MITTRA . 6 B. L. R., Ap, 5; 14 W. R., 283

54. ——— Purchase by grantor of patni tenure—*Beng Reg VIII of 1819, s. 11, cls 1 and 3—Rate of rent—Patni tenure*—The grantor of a patni tenure who subsequently purchases the lands granted by him in patni at the sale of the patni tenure does not revert *ipso facto* to the possession he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was

55. ——— Right to annul tenures—*Right of lessee claiming under purchaser—Tenures*

SALE FOR ARREARS OF RENT —continued.

■ INCUMBRANCES—continued

not annulled by purchaser—Where an auction purchaser did not avail himself of the power vested in him by law to avoid and annul a tenure created by his predecessor, *Held* that it was not open to any person subsequently holding his estates, and still less to a mere lessee claiming under him, to avoid the tenure. TABA CHAND DUTT v. WAKENOOTISSA BIERRE . 7 W. R., 81

56. ——— Power to make incumbrances—*Patni lease, Construction of—Beng Reg VIII of 1819*—A patni lease containing words to the effect that the patnidar could give no *dar patni*

acquire any of the rights of the patnidar, he is bound by the acts of the latter as regards the grant of leases. MOHADER MUNDUL v. COWELL . 15 W. R., 445

Upheld on review. COWELL v. MOHADER MUNDUL [17 W. R., 182

See MONOMOTHONATH DEY v. GLASCOTT [20 W. R., 275

SHAM CHAND MITTER v. JUGGUT CHUNDER SIRCAR [22 W. R., 50

Upheld on review . . . 22 W. R., 541

57. ——— Right of ejectment—*Right of purchaser of patni tenure—Waiver by acceptance of rent*—The receipt of rent for fifteen years by the purchaser of a patni talukh sold for arrears of rent under Regulation VIII of 1819 was held to be a waiver on his part of his right to evict the tenant under cl 2, s 11 of that Regulation. WOONATH ROY CHOWDHRY v. ROGROOVATH MITTER [5 W. R., Act X, 63

58. ——— Bengal Rent Act, 1865, s 66 (Beng. Act VIII of 1865, s. 16)—*Khodkash raiyats*—The object of s 16, Bengal Act VIII of 1865, was to protect, not merely any one class of tenants, but the leaseholder of the particular land used as "stores" . . . 140 W. R., 206

59. ——— Purchaser of rights of holder of fractional share.—S 10 of Bengal Act VIII of 1865 did not apply to the purchaser of the rights and interests of the holder of a fractional share in an under tenure. HARASUNDARI DAS v. KISTOMANT CHOWDHRAIN [5 B. L. R., Ap, 37; 13 W. R., 257

60. ——— Right of purchaser to eject tenants.—Where the rights and interests of a judgment-debtor were sold in execution under Bengal Act VIII of 1865, the tenure itself did

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G. INCUMBRANCES—continued.

not pass, much less did it pass free from all incumbrances; and the purchaser was not entitled to eject tenants who had been occupying and cultivating the land for more than twelve years. **RAJ KISHEN MOOKERJEE v. DUSRUTH SOOTRODHUR**

[15 W. R., 234]

61.

Under-tenure.

Sale of—Act X of 1859, s. 105—Under-tenures sold for arrears of rent under s. 105 of Act X of 1859, other than tenures upon which the right of selling for arrears of rent had been especially reserved by stipulation in the engagements interchanged on the creation of the tenures, did not pass free from incumbrances. *Seemle*—It was to get rid of this that s. 16 of Bengal Act VIII of 1865 was enacted. **SHAHABOODEEN v. FUTEH ALI**. B. L. R., Sup. Vol., 646

[2 Ind. Jur., N. S., 135 : 7 W. R., 280]

MOHIMA CHUNDER DEY v. GOOROO DOSS SEN

[7 W. R., 285]

INDUR CHUNDERA DOOGEE v. RUTTEN KOOMARUT BIBEE

7 W. R., 376

Then above Full Bench decision did not apply where the tenure itself was not sold. **DOORGA SOONDEREE DEBIA v. DINOBUNDHOO KYBERTO DOSS**

[8 W. R., 475]

62.

Sale of sub-

tenure—Beng. Reg. VIII of 1831.—Where a sub-tenure had been granted, but no power was reserved to the grantor in the sanad to sell the tenure free from incumbrances in case of default in payment of rent.—*Held* that, in a sale for arrears of rent under Regulation VIII of 1831, the purchaser did not take free from incumbrances created by the grantee. The decision in *Shahaboodeen v. Futeh Ali*, B. L. R., Sup. Vol., 646, affirmed. **FORBES v. LUTCHMEET SINGH**

[10 B. L. R., 139 : 17 W. R., 197]

14 Moore's L. A., 330

MOHESH CHUNDER BANERJEE v. CHUNDER MONKE DEBI

10 B. L. R., 150 note : 15 W. R., 237

63.

Beng. Act VIII

of 1865.—An auction-purchaser under Act VIII of 1865 was not at liberty, without notice of his intention to cancel a pre-existing under-tenure, or other act on his part, to avoid any incumbrance. **GOBIND CHUNDER BOSE v. ALIMOODDEEN**

11 W. R., 160

64.

Survival of in-

cumbrances. The sale of a tenure under s. 16, Bengal Act VIII of 1865, did not *ipso facto* annul all incumbrances, but certain incumbrances were recognized by this section to survive such sale. **UMASUNDARI DAS v. BIRBUL MANDAL**

[3 B. L. R., A. C., 183]

S. C. WOOMA SOONDEREE DOSSIA v. BEERBUL MUNDUL

11 W. R., 563

65.

Voidable incum-

brances.—Under Bengal Act VIII of 1865, s. 16, under-tenures became void *ipso facto* by the sale, and

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G. INCUMBRANCES—continued.

were not merely voidable at the option of the purchaser. **UNNODA CHURN DASS BISWAS v. MOTHURA NATH DASS BISWAS**

[I. L. R., 4 Calc., 860 : 4 C. L. R., 6]

66.

Suit to set aside incumbrances.—The right which an auction-purchaser has under the Rent Law, s. 66, to do away with under-tenures cannot be executed without a suit first having been instituted, the mere fact of purchase being insufficient to set aside incumbrances. **RAJ BULLUNH MITTER v. SREERAM SIRCAN**

[25 W. R., 109]

67.

Patni tenure—

Dar-patni tenure—Under-tenure—Incumbrance—Beng. Act VIII of 1869, ss. 59, 60.—The sale of a patni tenure for its own arrears under ss. 59 and 60, Bengal Act VIII of 1869, does not *per se* avoid the dar patni tenures, but only renders them voidable at the option of the purchaser. An under-tenure is an incumbrance within the meaning of s. 66, Bengal Act VIII of 1869. **TITU BIRI v. MOHESH CHUNDER BAGCHI**

I. L. R., 9 Calc., 683

S. C. TITU BIRI v. IBRAHIM MOLLAH

[12 C. L. R., 304]

68.

Brick-built house.

—A brick-built house was not an "incumbrance," or a tenure within the meaning of that word in s. 16 of Bengal Act VIII of 1865 which a purchaser at a sale for arrears of rent could remove. **SHYDDAS BANDAPADHYA v. BAMANDAS MUKHOPADHYA**

[8 B. L. R., 237 : 15 W. R., 360]

69.

Mortgage by defaulting tenant—Act X of 1859, s. 105.—A mortgage created by a defaulting under-tenant, on account of a debt contracted by him, could not continue to the prejudice of the auction-purchasers of the tenure sold for arrears of rent under s. 105, Act X of 1859. **KALEE KANT CHOWDHRY v. ROMONEE KANT BHUTTACHARJEE**

3 W. R., 217

70.

Title acquired

Adverse possession.—If the holder of an under-tenure allowed his tenant to occupy the land rent-free for more than twelve years, the interest thus created in the latter was an incumbrance upon the under-tenure as much within the reason of Bengal Act VIII of 1865, s. 16, as if the holder had made a rent-free grant or given a nominal lease. **MAHOMED ASKUR v. MAHOMED WASUCK**

22 W. R., 413

71.

Right of occu-

pancy under Act X of 1859, s. 6—Right of purchaser—Incumbrance.—A purchaser of a tenure sold under Act VIII of 1865 for arrears of rent could not, under s. 16, eject a raiyat who had acquired a right of occupancy under s. 6, Act X of 1859, under the former tenant. **NILMADHAB KARMAKAR v. SHIBU PAL**

[5 B. L. R., Ap., 18 : 13 W. R., 410]

PUREDAG SINGH v. PURTAB NARAYAN SINGH

[5 B. L. R., Ap., 20 : 11 W. R., 253]

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6 INCUMBRANCES—continued

BHOLANATH GHOSAL & KEDARNATH BANERJEE
[19 W. R., 106]EMAM ALI MESTORY & ATOR ALI KHAN
[22 W. R., 133]

72 ————— *Intermediate holding—Hoi la tenure*—An auction purchaser at a sale held under Bengal Act VIII of 1865 had a right to get rid of an intermediate holding such as a howla so far as to substitute himself for the howladar in respect of the collection of the rayats' rents. **MOHICODDREN MAHOMED & RAM KISHORE KOONDOL**
[22 W. R., 311]

73 ————— *Rights of a purchaser at an auction sale held under Beng. Act VIII of 1865 when in collusion with the former proprietor*—A proprietor of a talukh which was about to be sold for arrears of rent, entered into an arrangement with the plaintiff whereby, in consideration of a share in the purchase, he agreed to use his influence to urge on the sale, and to secure the purchase to the plaintiff. Under this arrangement, the plaintiff became the purchaser of the talukh, and the defendant was to be paid a share of the purchase money.
[22 W. R., 311]

GHOSH & HARONATH DUTT CHOWDHRY
[9 B. L. R., 230; 18 W. R., 240]

74. ————— *Shikmi tenure*—Where a shikmi tenure was sold under Bengal Act VIII of 1865 and the shikmidar was found to be the

75. ————— *Shikmi tenure*—At a sale held under Bengal Act VIII of 1865 the defendant purchased a shikmi tenure, and obtained possession thereof. Subsequently he ousted the

INCUMBRANCES created under Bengal Act VIII of 1865 the incumbrances created by the former holder were voidable by the auction purchaser and

[3 B. L. R., Ap., 97; 12 W. R., 32]

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6 INCUMBRANCES—continued

See SRINATH CHUCKERBUTTY & SRIMANTO LASHKAR

[8 B. L. R., 240 note, 10 W. R., 467]

76 ————— *Incumbrance created with sanction of zamindar*—In a suit by a purchaser at a sale under Bengal Act VIII of 1865 to get rid of an under tenure set up by the defendants where, in reliance upon the latter clause of s. 16, it was urged that the pottah under which the defendants held was created by the late holder with the express sanction of the zamindar, it was held that under the strict provisions of that section no sanction of the zamindar would avail, unless the right was vested in the holder by the written engagement under which the under tenure was created or by the subsequent written authority of the person who created it or his representatives. **ESHAN CHUNDER MOJUMDAR & HURISH CHUNDER GHOSH**
[21 W. R., 137]

77 ————— *Avoidance of incumbrance—Beng Act VIII of 1869 s. 59, 60*—On a partition of the joint family property, a certain ganti tenure, which had been purchased by

gantid tenure. It appeared that the tenure under which the defendant held the land was created, not

78 ————— *Beng Reg VIII of 1819 s. 11—Cancellation of under-tenures* Lands

the Regulation the plaintiff's tenure was cancelled. Compare **Unoda Churn Das v Muthura Nath Das**, 1 L. R., 4 Cal., 560 & C. L. E., 6. **Surnomoyes v Sultess Chunder Roy Bahadur**, 10 Moore's I. A., 123, cited and discussed. **MOHINI CHUNDER MOJUMDAR & JOTIRMOT GHOSH**
[4 C. L. R., 422]

79 ————— *Beng Reg VIII of 1819, s. 11—'Defaulting proprietor'—'Defaulter'—Incumbrances created by previous patnidar—Mokurari lease, Avoidance of—Voidable incumbrances*—In 1839 a mokurari lease was granted to the predecessors of the defendants by the then

SALE FOR ARREARS OF RENT —continued.

6. INCUMBRANCES—continued.

patnidar of a patni created in 1819. In 1848 the patni was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the mokurari. In 1885 the patni was again brought to sale under the same Regulation for arrears of rent, the default being made by one of the successors of the purchaser in 1848, and at this sale it was purchased by the plaintiffs. In 1890 the plaintiffs sued to set aside the mokurari lease, contending that they were, by virtue of their purchase, entitled to avoid all incumbrances created by any patnidar, and were not restricted to avoiding merely those created by the immediate defaulter. The defendants contended that the provisions of s. 11 of the Regulation restricted the plaintiffs to avoiding incumbrances the acts of the immediate defaulter, and that, as the purchaser in 1848, and his successors in title previous to the defaulter in 1885, had not interfered with the mokurari lease, the plaintiffs could not have it set aside. *Held* (RAMPINI, J., dissenting) that the plaintiffs were entitled to avoid the mokurari. *Held per* GHOSE and BEVERLEY, JJ., that having regard to the policy and principle of the Regulation, a zamindar is entitled to bring a patni to sale in the same condition in which it was at the time of its creation, and that the purchaser is therefore entitled to avoid all incumbrances imposed upon it since its creation, whether by the actual defaulter or by any of his predecessors. *Per* GHOSE, J.—The mokurari lease was an incumbrance upon the patni, but inasmuch as s. 11 distinguishes in cls. 1 and 2 between “incumbrances” and “leases,” it might be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the patni by reason of the defaulting zamindar not having set it aside, though entitled to do so within the meaning of those words in cl. 1. If treated as a lease, the words in cl. 2, “holder of the former tenure,” are wide enough to include any patnidar whether the defaulting or a previous holder. *Per* BEVERLEY, J.—The words “defaulting proprietor” used in cl. 1 of s. 11 must be read as the “proprietor of the tenure in default,” and were not intended to be restricted to the particular proprietor for whose default the tenure is brought to sale, and the word “defaulter” used in cl. 2 of that section must be given a similarly wide interpretation. *GOPENDRO CHUNDER MITTER v. MOHADDAM HOSSAIN*. I. L. R., 21 Cal., 702

80. ——— cl. (3)—*Occupancy or non-occupancy holding, whether an incumbrance.*—An occupancy or non-occupancy holding, if not held by a khodkasht raiyat, i.e., a resident and hereditary cultivator, is an incumbrance and not protected from ejectment by the terms of cl. 3, s. 11 of Regulation VIII of 1819, and may be annulled by a purchaser at a sale under the said Regulation. *JOGESHWAR MAZUMDAR v. ABED MAHOMED SEBKAR* [3 C. W. N., 13

81. ——— Bengal Tenancy Act (VIII of 1885), s. 161—*Exchange of land—Suit for recovery of possession of land.*—Exchange of land is

SALE FOR ARREARS OF RENT —continued.

6. INCUMBRANCES—continued.

an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. *CHUNDRA SAKAI v. KALLI PROSANNO CHUKERBUTTY*

[I. L. R., 23 Cal., 254

82. ——— and s. 171—*Payment by person interested to prevent sale—Mortgage—Incumbrance.*—A mortgage created by the operation of s. 171 of the Bengal Tenancy Act (VIII of 1885) is not an incumbrance within the meaning of s. 161 of that Act, and is not liable to be annulled as such at the instance of a purchaser of a holding at a sale in execution of a decree for arrears of rent. *PASUPATI MOHAPATRA v. NARAYANI DASSI*. I. L. R., 24 Cal., 537 [1 C. W. N., 519

83. ——— and s. 167—*Notice—Mortgage.*—A sale purporting to be under s. 161 and the following sections of the Bengal Tenancy Act (VIII of 1885) does not *ipso facto* cancel incumbrances. Notice must be given under s. 167 according to the procedure laid down in that section. *BENI PROSAD SINHA v. REWAT LALL* [I. L. R., 24 Cal., 746

84. ——— s. 167—*Effect of service of notice—Annulment of incumbrance—Property in possession of a person other than the purchaser.*—Service of notice under s. 167 of the Bengal Tenancy Act has the effect of annulling an incumbrance. It is not necessary for the purchaser to bring a declaratory suit to have it declared that the incumbrance is annulled. The incumbrance would be annulled even if the property be not at the time of the service of the notice under s. 167 in the possession of the purchaser, but of somebody else. *PEARI LAL ROY v. MOHESWARI DEBI*

[I. L. R., 25 Cal., 551

85. ——— and ss. 65, 148, 161, and 178—*Estoppe—Mortgagor and mortgagee—Order in execution proceedings against mortgagee—Res judicata—Decree obtained before Bengal Tenancy Act came into force—Execution under former Rent Law—Incumbrance—Mode of annulling incumbrance—Sale for arrears of rent—Charge of rent as first charge on tenure—Sale in execution of mortgage-decree—Decree for sale.*—By a mortgage-bond, dated the 22nd August 1884, and registered, K created a charge in favour of the plaintiff on six talukhs for repayment of the mortgage-debt, in respect of two of which talukhs suits had been brought by the zamindar for arrears of rent, and decrees obtained on the 6th June 1885, before the coming into operation of the Bengal Tenancy Act (VIII of 1885). After that Act had come into force, these decrees were assigned to G, a benamidar for P, for execution, and on his seeking to execute them, he was opposed by K on the ground that, as the transfer of the decree by assignment, and the subsequent application for execution, were made after the Bengal Tenancy Act had come into force, and as G the

SALE FOR ARREARS OF RENT

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6 INCUMBRANCES—continued

assignee had acquired no interest in the talukhs, his application for execution could not be granted under s 148, cl (A) of that Act. On the 5th July 1886 the Court overruled this objection and ordered execution to issue, holding that, as the decrees in the rent suits were passed before the Tenancy Act came into operation the execution should proceed under the old law. In execution of the decrees, the two talukhs were put up for sale, and purchased by G as benamidar for P. In a suit brought by the plaintiff the mortgagee, against K and P (and others representing others of the six talukhs), it was contended so far as the two talukhs were concerned, that the plaintiff, though not a party to the execution proceedings, was bound by the order of the 9th July 1886 made in the course of those proceedings, that P, having purchased the two talukhs at sales for arrears of rent, had acquired them free from all incumbrances, that the plaintiff's mortgage was not a notified incumbrance within the meaning of s 161 of the Tenancy Act, and that he was therefore not entitled to have his mortgage-lien declared against

mortgagee. *Dooma Sahoo v Jocharam Lall* 12 W R 862 4 B L R, A C, 7 note. *Tridhobus Singh v Jhono Lall* 18 W. R, 206, *Bonomali Nag v Koylash Chunder Dey* 1 L R, 4 Calc 692. *Madho Pershad Singh v Purnshan Ram* 1 L R, 4 Calc 520 and *Sitaram v Amir Begam*, 1 L R, 8 All, 324 referred to. The proprietor of an estate cannot be said to represent the whole estate after he has mortgaged it, and this distinguishes the case of a mortgagor as representing an estate from that of a Hindu widow, or shebait, who are held to represent the estate so as to bind the reversioner or the succeeding shebait. The interest of a mortgagee in an estate may be greater than that left in the mortgagor or in the present case where it was no part of the mortgagor's interest to protect the incumbrance, the interests of the mortgagor and mortgagee are not identical, the balance of justice and expediency therefore is in favour of not allowing a mortgagee to be bound by an order made against his mortgagor. Nor is there anything in the provisions of the rent law against that view. A decree for rent of a tenure obtained against the registered tenant binds an unregistered transferee of the tenure who can show no sufficient cause for not registering his name, and may be

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sufficient conformity with the rent law to be operative in annulling a prior mortgage, or other incumbrance, must be determined in the presence of the party claiming the benefit of the incumbrance. *Tridhobus Singh v Jhono Lal*, 18 W R, 206, and *Madho Pershad Singh v Purnshan Ram*, 1 L R, 4

SALE FOR ARREARS OF RENT

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6 INCUMBRANCES—continued

Calc, 520 referred to. Held also that, though the rent decrees were passed under the old rent law, the assignment and the application by the assignee for execution having been made after the Bengal Tenancy Act came into force, cl (A) of s 148 of that Act applied to the execution proceedings [*Kanyat Singh v Meherban Koer*, 1 L R, 3 Calc 663] and the sale on such an application, which is prohibited by that clause must be held to be no sale under the rent law. The clause does not affect any vested right. All that it prohibits is an application for the enforcement of the decree by an assignee and that is a matter of procedure. If any right is affected it is not a right of the decree holder but the right of the assignee of the decree to apply for execution, and in this case there was no such assignee before the Bengal Tenancy Act came into force. The mode provided by s 167 of the Bengal Tenancy Act is the only mode in which incumbrances can be annulled by purchasers of tenures for arrears of rent, and that mode not having been followed in this case, the incumbrance on the two talukhs was not annulled. S 65 of the Tenancy Act, which provides that the tenure or holding shall be liable to sale in execution of a decree for the rent thereof and the rent shall be a first charge thereon, only intends what is laid down in Ch XIV of the Act namely, that the charge should be enforced by the sale of the tenure or holding free of incumbrances, and if in any case the decree for rent either has not been or cannot be, enforced by the sale of the tenure, the charge created by s 65 cannot be enforced in any other way. No reason therefore could be shown under that section for making the sale in satisfaction of the plaintiff's mortgage, subject to the rent decree as a first charge. *SOSHI BHUSUK GUHA v GOGAN CHUNDER SHAIK* [1 L R, 22 Calc, 864

86 ——— and s 165—
Notice to annul incumbrance, whether necessary, when the purchaser and in umbrancer are the same person—After a mortgage-decree was passed the mortgaged property was sold in execution of a decree for rent and was purchased by the mortgagee decree holder. The mortgage decree pro

mortgagee decree holder preferred a second appeal. Held that, even if the sale was under s 165 of the

SALE FOR ARREARS OF RENT —continued.

6. INCUMBRANCES—continued.

patnidar of a patni created in 1819. In 1848 the patni was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the mokurari. In 1885 the patni was again brought to sale under the same Regulation for arrears of rent, the default being made by one of the successors of the purchaser in 1848, and at this sale it was purchased by the plaintiffs. In 1890 the plaintiffs sued to set aside the mokurari lease, contending that they were, by virtue of their purchase, entitled to avoid all incumbrances created by any patnidar, and were not restricted to avoiding merely those created by the immediate defaulter. The defendants contended that the provisions of s. 11 of the Regulation restricted the plaintiffs to avoiding incumbrances the acts of the immediate defaulter, and that, as the purchaser in 1848, and his successors in title previous to the defaulter in 1885, had not interfered with the mokurari lease, the plaintiffs could not have it set aside. *Held* (RAMINI, J., dissenting) that the plaintiffs were entitled to avoid the mokurari. *Held per* GHOSE and BEVERLEY, JJ., that having regard to the policy and principle of the Regulation, a zamindar is entitled to bring a patni to sale in the same condition in which it was at the time of its creation, and that the purchaser is therefore entitled to avoid all incumbrances imposed upon it since its creation, whether by the actual defaulter or by any of his predecessors. *Per* GHOSE, J.—The mokurari lease was an incumbrance upon the patni, but inasmuch as s. 11 distinguishes in cl. 1 and 2 between “incumbrances” and “leases,” it might be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the patni by reason of the defaulting zamindar not having set it aside, though entitled to do so within the meaning of those words in cl. 1. If treated as a lease, the words in cl. 2, “holder of the former tenure,” are wide enough to include any patnidar whether the defaulting or a previous holder. *Per* BEVERLEY, J.—The words “defaulting proprietor” used in cl. 1 of s. 11 must be read as the “proprietor of the tenure in default,” and were not intended to be restricted to the particular proprietor for whose default the tenure is brought to sale, and the word “defaulter” used in cl. 2 of that section must be given a similarly wide interpretation. *GOPENDRO CHUNDER MITTER v. MOKADDAM HOSSAIN*. I. L. R., 21 Cal., 702

80. ——— cl. (3)—*Occupancy or non-occupancy holding, whether an incumbrance.*—An occupancy or non-occupancy holding, if not held by a khodkasht raiyat, i.e., a resident and hereditary cultivator, is an incumbrance and not protected from ejectment by the terms of cl. 3, s. 11 of Regulation VIII of 1819, and may be annulled by a purchaser at a sale under the said Regulation. *JOGESHWAR MAZUMDAR v. ABED MAHOMED SIRKAR* [3 C. W. N., 13

81. ——— Bengal Tenancy Act (VIII of 1885), s. 161—*Exchange of land—Suit for recovery of possession of land.*—Exchange of land is

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6. INCUMBRANCES—continued.

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SALE FOR ARREARS OF RENT

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6 INCUMBRANCES—continued

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729th, 730th, 731st, 732nd, 733rd, 734th, 735th, 736th, 737th, 738th, 739th, 740th, 741st, 742nd, 743rd, 744th, 745th, 746th, 747th, 748th, 749th, 750th, 751st, 752nd, 753rd, 754th, 755th, 756th, 757th, 758th, 759th, 760th, 761st, 762nd, 763rd, 764th, 765th, 766th, 767th, 768th, 769th, 770th, 771st, 772nd, 773rd, 774th, 775th, 776th, 777th, 778th, 779th, 780th, 781st, 782nd, 783rd, 784th, 785th, 786th, 787th, 788th, 789th, 790th, 791st, 792nd, 793rd, 794th, 795th, 796th, 797th, 798th, 799th, 800th, 801st, 802nd, 803rd, 804th, 805th, 806th, 807th, 808th, 809th, 810th, 811st, 812nd, 813th, 814th, 815th, 816th, 817th, 818th, 819th, 820th, 821st, 822nd, 823rd, 824th, 825th, 826th, 827th, 828th, 829th, 830th, 831st, 832nd, 833rd, 834th, 835th, 836th, 837th, 838th, 839th, 840th, 841st, 842nd, 843rd, 844th, 845th, 846th, 847th, 848th, 849th, 850th, 851st, 852nd, 853rd, 854th, 855th, 856th, 857th, 858th, 859th, 860th, 861st, 862nd, 863rd, 864th, 865th, 866th, 867th, 868th, 869th, 870th, 871st, 872nd, 873rd, 874th, 875th, 876th, 877th, 878th, 879th, 880th, 881st, 882nd, 883rd, 884th, 885th, 886th, 887th, 888th, 889th, 890th, 891st, 892nd, 893rd, 894th, 895th, 896th, 897th, 898th, 899th, 900th, 901st, 902nd, 903rd, 904th, 905th, 906th, 907th, 908th, 909th, 910th, 911st, 912nd, 913th, 914th, 915th, 916th, 917th, 918th, 919th, 920th, 921st, 922nd, 923rd, 924th, 925th, 926th, 927th, 928th, 929th, 930th, 931st, 932nd, 933rd, 934th, 935th, 936th, 937th, 938th, 939th, 940th, 941st, 942nd, 943rd, 944th, 945th, 946th, 947th, 948th, 949th, 950th, 951st, 952nd, 953rd, 954th, 955th, 956th, 957th, 958th, 959th, 960th, 961st, 962nd, 963rd, 964th, 965th, 966th, 967th, 968th, 969th, 970th, 971st, 972nd, 973rd, 974th, 975th, 976th, 977th, 978th, 979th, 980th, 981st, 982nd, 983rd, 984th, 985th, 986th, 987th, 988th, 989th, 990th, 991st, 992nd, 993rd, 994th, 995th, 996th, 997th, 998th, 999th, 1000th, 1001st, 1002nd, 1003rd, 1004th, 1005th, 1006th, 1007th, 1008th, 1009th, 1010th, 1011st, 1012nd, 1013th, 1014th, 1015th, 1016th, 1017th, 1018th, 1019th, 1020th, 1021st, 1022nd, 1023rd, 1024th, 1025th, 1026th, 1027th, 1028th, 1029th, 1030th, 1031st, 1032nd, 1033rd, 1034th, 1035th, 1036th, 1037th, 1038th, 1039th, 1040th, 1041st, 1042nd, 1043rd, 1044th, 1045th, 1046th, 1047th, 1048th, 1049th, 1050th, 1051st, 1052nd, 1053rd, 1054th, 1055th, 1056th, 1057th, 1058th, 1059th, 1060th, 1061st, 1062nd, 1063rd, 1064th, 1065th, 1066th, 1067th, 1068th, 1069th, 1070th, 1071st, 1072nd, 1073rd, 1074th, 1075th, 1076th, 1077th, 1078th, 1079th, 1080th, 1081st, 1082nd, 1083rd, 1084th, 1085th, 1086th, 1087th, 1088th, 1089th, 1090th, 1091st, 1092nd, 1093rd, 1094th, 1095th, 1096th, 1097th, 1098th, 1099th, 1100th, 1101st, 1102nd, 1103rd, 1104th, 1105th, 1106th, 1107th, 1108th, 1109th, 1110th, 1111st, 1112nd, 1113th, 1114th, 1115th, 1116th, 1117th, 1118th, 1119th, 1120th, 1121st, 1122nd, 1123rd, 1124th, 1125th, 1126th, 1127th, 1128th, 1129th, 1130th, 1131st, 1132nd, 1133rd, 1134th, 1135th, 1136th, 1137th, 1138th, 1139th, 1140th, 1141st, 1142nd, 1143rd, 1144th, 1145th, 1146th, 1147th, 1148th, 1149th, 1150th, 1151st, 1152nd, 1153rd, 1154th, 1155th, 1156th, 1157th, 1158th, 1159th, 1160th, 1161st, 1162nd, 1163rd, 1164th, 1165th, 1166th, 1167th, 1168th, 1169th, 1170th, 1171st, 1172nd, 1173rd, 1174th, 1175th, 1176th, 1177th, 1178th, 1179th, 1180th, 1181st, 1182nd, 1183rd, 1184th, 1185th, 1186th, 1187th, 1188th, 1189th, 1190th, 1191st, 1192nd, 1193rd, 1194th, 1195th, 1196th, 1197th, 1198th, 1199th, 1200th, 1201st, 1202nd, 1203rd, 1204th, 1205th, 1206th, 1207th, 1208th, 1209th, 1210th, 1211st, 1212nd, 1213th, 1214th, 1215th, 1216th, 1217th, 1218th, 1219th, 1220th, 1221st, 1222nd, 1223rd, 1224th, 1225th, 1226th, 1227th, 1228th, 1229th, 1230th, 1231st, 1232nd, 1233rd, 1234th, 1235th, 1236th, 1237th, 1238th, 1239th, 1240th, 1241st, 1242nd, 1243rd, 1244th, 1245th, 1246th, 1247th, 1248th, 1249th, 1250th, 1251st, 1252nd, 1253rd, 1254th, 1255th, 1256th, 1257th, 1258th, 1259th, 1260th, 1261st, 1262nd, 1263rd, 1264th, 1265th, 1266th, 1267th, 1268th, 1269th, 1270th, 1271st, 1272nd, 1273rd, 1274th, 1275th, 1276th, 1277th, 1278th, 1279th, 1280th, 1281st, 1282nd, 1283rd, 1284th, 1285th, 1286th, 1287th, 1288th, 1289th, 1290th, 1291st, 1292nd, 1293rd, 1294th, 1295th, 1296th, 1297th, 1298th, 1299th, 1300th, 1301st, 1302nd, 1303rd, 1304th, 1305th, 1306th, 1307th, 1308th, 1309th, 1310th, 1311st, 1312nd, 1313th, 1314th, 1315th, 1316th, 1317th, 1318th, 1319th, 1320th, 1321st, 1322nd, 1323rd, 1324th, 1325th, 1326th, 1327th, 1328th, 1329th, 1330th, 1331st, 1332nd, 1333rd, 1334th, 1335th, 1336th, 1337th, 1338th, 1339th, 1340th, 1341st, 1342nd, 1343rd, 1344th, 1345th, 1346th, 1347th, 1348th, 1349th, 1350th, 1351st, 1352nd, 1353rd, 1354th, 1355th, 1356th, 1357th, 1358th, 1359th, 1360th, 1361st, 1362nd, 1363rd, 1364th, 1365th, 1366th, 1367th, 1368th, 1369th, 1370th, 1371st, 1372nd, 1373rd, 1374th, 1375th, 1376th, 1377th, 1378th, 1379th, 1380th, 1381st, 1382nd, 1383rd, 1384th, 1385th, 1386th, 1387th, 1388th, 1389th, 1390th, 1391st, 1392nd, 1393rd, 1394th, 1395th, 1396th, 1397th, 1398th, 1399th, 1400th, 1401st, 1402nd, 1403rd, 1404th, 1405th, 1406th, 1407th, 1408th, 1409th, 1410th, 1411st, 1412nd, 1413th, 1414th, 1415th, 1416th, 1417th, 1418th, 1419th, 1420th, 1421st, 1422nd, 1423rd, 1424th, 1425th, 1426th, 1427th, 1428th, 1429th, 1430th, 1431st, 1432nd, 1433rd, 1434th, 1435th, 1436th, 1437th, 1438th, 1439th, 1440th, 1441st, 1442nd, 1443rd, 1444th, 1445th, 1446th, 1447th, 1448th, 1449th, 1450th, 1451st, 1452nd, 1453rd, 1454th, 1455th, 1456th, 1457th, 1458th, 1459th, 1460th, 1461st, 1462nd, 1463rd, 1464th, 1465th, 1466th, 1467th, 1468th, 1469th, 1470th, 1471st, 1472nd, 1473rd, 1474th, 1475th, 1476th, 1477th, 1478th, 1479th, 1480th, 1481st, 1482nd, 1483rd, 1484th, 1485th, 1486th, 1487th, 1488th, 1489th, 1490th, 1491st, 1492nd, 1493rd, 1494th, 1495th, 1496th, 1497th, 1498th, 1499th, 1500th, 1501st, 1502nd, 1503rd, 1504th, 1505th, 1506th, 1507th, 1508th, 1509th, 1510th, 1511st, 1512nd, 1513th, 1514th, 1515th, 1516th, 1517th, 1518th, 1519th, 1520th, 1521st, 1522nd, 1523rd, 1524th, 1525th, 1526th, 1527th, 1528th, 1529th, 1530th, 1531st, 1532nd, 1533rd, 1534th, 1535th, 1536th, 1537th, 1538th, 1539th, 1540th, 1541st, 1542nd, 1543rd, 1544th, 1545th, 1546th, 1547th, 1548th, 1549th, 1550th, 1551st, 1552nd, 1553rd, 1554th, 1555th, 1556th, 1557th, 1558th, 1559th, 1560th, 1561st, 1562nd, 1563rd, 1564th, 1565th, 1566th, 1567th, 1568th, 1569th, 1570th, 1571st, 1572nd, 1573rd, 1574th, 1575th, 1576th, 1577th, 1578th, 1579th, 1580th, 1581st, 1582nd, 1583rd, 1584th, 1585th, 1586th, 1587th, 1588th, 1589th, 1590th, 1591st, 1592nd, 1593rd, 1594th, 1595th, 1596th, 1597th, 1598th, 1599th, 1600th, 1601st, 1602nd, 1603rd, 1604th, 1605th, 1606th, 1607th, 1608th, 1609th, 1610th, 1611st, 1612nd, 1613th, 1614th, 1615th, 1616th, 1617th, 1618th, 1619th, 1620th, 1621st, 1622nd, 1623rd, 1624th, 1625th, 1626th, 1627th, 1628th, 1629th, 1630th, 1631st, 1632nd, 1633rd, 1634th, 1635th, 1636th, 1637th, 1638th, 1639th, 1640th, 1641st, 1642nd, 1643rd, 1644th, 1645th, 1646th, 1647th, 1648th, 1649th, 1650th, 1651st, 1652nd, 1653rd, 1654th, 1655th, 1656th, 1657th, 1658th, 1659th, 16

SALE FOR ARREARS OF RENT —continued.

6. INCUMBRANCES—continued.

Bengal Tenancy Act, the incumbrance had not been annulled by proceedings under s. 167, and the appeal ought to be dismissed. *GOLUK CHUNDER DAS v. RAM SUNKER SUTT* . . . 4 C. W. N., 268

87. ————— “Purchaser,”
Meaning of—Incumbrance, Annulment of, when purchaser himself is the incumbrancer—Transfer of Property Act (IV of 1882), s. 101.—The purchaser contemplated by s. 167 is a purchaser independently of the incumbrancer, and where the incumbrancer himself purchases the property encumbered to him, in execution of a decree for arrears of rent, it is not necessary for him to give notice of annulment of his incumbrance under s. 167 of the Bengal Tenancy Act. Under s. 101 of the Transfer of Property Act, which is of general application, his incumbrance is extinguished unless he evinces an intention to keep it alive. Where a mortgagee has purchased the mortgaged property in execution of a rent decree, he is entitled to proceed against the other properties of the mortgagor. *Goluk Chunder Das v. Ram Sunker Sutt*, 4 C. W. N., 268, dissented from. *MASTULLAH MANDAL v. GYAN MAMUD SAH* . . . 4 C. W. N., 735

88. ————— Madras Rent Recovery Act, s. 38—*Incumbrance.*—As the tenancy of an ordinary pottahdar only confers on him a right of occupancy until default in payment of rent and the determination of the tenancy under the provisions of the Rent Act, any incumbrance created by such pottahdar on the land cannot affect the landholder's statutory power of sale under the Act or the rights of the purchaser at such sale. *KONDI MUNISAMI CHETTI v. DAKSHANAMURTHI PILLAI* . . . I. L. R., 5 Mad., 371

89. ————— *Purchase by creditor—Civil Procedure Code, 1882, ss 376, 295—Sale of tenant's interest by landlord pending attachment by Civil Court.*—The interest of a tenant in certain land having been attached by his creditor in execution of a decree for money, the landlord attached the same land for arrears of rent, brought it to sale, and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid,—*Held* that the landlord's purchase was subject to the creditor's attachment. *SUBRAMANYA v. RAJARAY* [I. L. R., 8 Mad., 573

90. ————— *Sale of tenant's interest—Prior incumbrance—Rights of purchaser.*—A sale by a landlord of a tenant's interest in his holding for non-payment of rent under the provisions of s. 38 of the Rent Recovery Act (Madras Act VIII of 1865) does not defeat existing incumbrances. *Munisami v. Dukshanamurti*, I. L. R., 5 Mad., 371, overruled. *RAJAGOPALASHARI v. SUBBARAYA MUDALI* [I. L. R., 7 Mad., 31

See *ZAMINDAR OF RAMNAD v. RAMAMANY AMMAL* . . . I. L. R., 2 Mad., 234

SALE FOR ARREARS OF RENT —continued.

6. INCUMBRANCES—concluded.

91. ————— *Mulageni lease—Encumbered tenancy.*—A demised land to B on a mulageni lease. B mortgaged his tenancy to A. The rent under the mulageni lease fell into arrears, and A obtained a decree against B for the amount. *Held* that arrears of rent are not a first charge on the tenant's holding, and accordingly that the landlord could not execute his decree by sale of the tenancy free from the mortgage created by the tenant. *Rajagopal v. Subbaraya*, I. L. R., 7 Mad., 31, followed. *PADAKANNAYA v. NARASINMA* [I. L. R., 10 Mad., 266

7. RIGHTS AND LIABILITIES OF PURCHASERS.

92. ————— *Right of purchaser—Right to khas possession.*—A raiyat's tenure having been sold for arrears of rent under an Act X decree, the purchaser was held to be entitled to be put in khas possession of the entire tenure as it originally stood, notwithstanding that the sons of the raiyat had been occupying huts on the land for more than twenty years. The circumstance that the purchaser happened to be the superior landlord did not diminish his right. *TELOTTUMA DEBEE v. BROJO LALL SHAMUNT* . . . 8 W. R., 478

93. ————— *Right to nij-jote land.*—The right to hold nij-jote lands necessarily passes with the sale to the auction-purchaser. *JOY DUTT JHA v. BAYEE RAM SINGH* . . . 7 W. R., 40

94. ————— *Right to rent due at time of sale.*—A purchaser of a patni sold in execution buys it with all its liabilities, including instalments due to the zamindar, and cannot recover them from the original patnidar. *KHODA BUKSH v. DE-GUMBURKE DOSSEE* . . . W. R., 1864, 207

95. ————— *Right to rent—Liability of patnidar for rent—Benj. Reg. VIII of 1819, s. 8, cl. 3.*—Where a patnidar's possession is disturbed by the zamindar, and he is prevented from collecting the rents of certain kists, he is not liable for these kists. Where a talukh is sold for arrears, the patnidar who is sold out is not liable for the rent of the month in which the zamindar presented the petition enjoined by cl. 3, s. 8, Regulation VIII of 1819. *DARIMBA DEBIA v. NILMONEE SINGH DEO* [15 W. R., 180

96. ————— *Right to rent—Liability of surety of patnidar.*—The purchaser of the rights and interests of a patnidar in a patni talukh sold for arrears of rent purchases the talukh subject to whatever claims the zamindar has against it for rent, and has no claim against the surety of the patnidar by reason of the name of the latter appearing as the owner of the talukh in the zamindar's papers or otherwise. He may sue the other sharers for the money which he has paid on their account. *OBHOY CHUNDER BUNDOPADHYA v. NILAMBUR MOOKERJEE* [W. R., 1864, 73

SALE FOR ARREARS OF RENT

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7 RIGHTS AND LIABILITIES OF PURCHASERS—continued

97. — *Sale under Beng Act VIII of 1865—What passes at sale—As a general rule when a decree under the Act of 1865, the whole reservation made*
GOBIND BISWAS v DUMOUNTREE DAS
 [13 W. R., 304]

98. — *Purchaser of shareholder's rights—Sole under Beng Act VIII of 1865—The purchaser of a partnership in a tenure—in other words, of a shareholder's rights—acquired no right to retain possession against a person who bought the tenure itself when sold for arrears under Bengal Act VIII of 1865*
HURU NARAIN GHOSH v DURGA CHURN BISER
 15 W. R., 319

99. — *Purchase by shareholders—Ousut howlas, Effect of sale on—Recorded tenants—A shareholder is not precluded from purchasing the whole of a howla sold bond fide for arrears of rent due from himself and his co-sharer. All oust howlas created by the co-sharers fall with the sale of a howla unless specially protected by the howla lease. A zamindar may bring a suit for arrears only against the tenant whose name is*

CHURN BOSH v MEHAROOONISSA BIKER
 [7 W. R., 318]

100. — *Liability of co-share on sale of tenure—Where a decree was for arrears of rent due upon a tenure it was held that, though the sale proceedings specified that the rights and interests of certain parties were sold yet the tenure itself was sold and all the co-sharers were jointly liable*
ALIMOODDEEN v SABIN KHAN
 [8 W. R., 60]

Contra, **LALLA SABIL CHAND v GOODUR KHAN**
 [22 W. R., 187]

101. — *Right of purchaser of transferable under tenure to void leases—Right to enhance rent—The purchaser of a transferable under tenure in execution of a decree for rent may void any lease or holding within the tenure not specially protected by law and consequently may sue for a howla at at rates paid for similar lands in the neighbourhood*
SRISHTEDRUR MUNDUL v GOBIND SURUCKAR
 6 W. R., Act X, 15

102. — *Act X of 1859, s 105—Beng Reg VIII of 1819 s 11—Title created by purchaser—Where a tenant committed*

SALE FOR ARREARS OF RENT

—continued

7 RIGHTS AND LIABILITIES OF PURCHASERS—continued

created by himself. Where he himself has sold to a third party, he is bound to recognize that party's purchase, and also all bond fide leases under that party. Where the lease by which a howla tenure is created does not expressly reserve it for sale for non payment of rent the rights of an auction-purchaser cannot arise under Regulation VIII of 1819

MEHAROOONISSA BIKER v HUR CHURN BOSH
 [10 W. R., 220]

103. — *Principle with regard to purchasers at revenue sales—The principle laid down in the case of Surnomoyee v Sutties Chunder Roy, 2 W. R. P. C. 14 10 Upore's I A., 123, with respect to the rights of purchasers at sales for arrears of revenue is applicable to sales for arrears of rent under Regulation VIII of 1819*
WOMANATH ROY CHOWDHURY v ROGHOOONATH MITTER
 5 W. R., Act X, 63

104. — *As to accrued due against Hindu female heir after death of last full owner—Effect of sale in execution under Beng. Act VIII of 1869—Personal execution against female heir—A claim for arrears of rent against a female heir accrued due after the death of the last full owner is a personal claim against her, therefore by a sale held under the provisions of Bengal Act VIII of 1869 in execution of a decree for arrears of such rent obtained against her by some of the co-*

21 A. 270 and Mohima Chunder Poo Chowdhury v Ram Kishore Acharye Choudhry, 15 B. L. R., 142
23 W. R., 174 followed BRAJ LAL SEN v JIBAN KRISHNA ROY
 I L. R., 28 Cal., 288

105. — *Liability of purchaser—Date from which purchaser's liability for rent*

purchase **BEEPIN BEHARER BISWAS v JUDDOONATH HAZRAH**
 21 W. R., 367

106. — *Liability to condition in lease—Right of re entry—A dur patti lease granted upon the payment of a bonus contained a condition that if the annual rent remained for a longer period than one month in arrear the lessor should have a right of re entry. The lessor, upon default in payment of rent without availing himself of the forfeiture, instituted a summary suit for the arrears of rent, and upon an award therein the lands were sold for such arrears. Held that the purchaser, who bought the patti tenure without notice of the condition for forfeiture, was not subject to that condition*
DRENDYAL PARJMANIOW v JUDGESHUR ROY
 Marsh., 252; 2 Hay, 21

SALE FOR ARREARS OF RENT

—continued.

7. RIGHTS AND LIABILITIES OF PURCHASERS—continued.

107. — *Liability to decree in ejectment suit—Previous purchase by mortgagee of portion of tenure—Right of purchaser to question by suit the validity of decree for ejectment if not a party to the rent suit.*—In a suit for arrears of rent by a mukuridar against his dar-mukuridar, a decree was passed ejecting the latter, and, as a consequence, the tenure of the dar-mukuridar was cancelled. *Held* that a mortgagee from the dar-mukuridar, who had, previously to the rent suit, obtained a decree on his mortgage and purchased himself at the auction-sale, and who had not been made a party to the rent suit, was entitled to question by suit the validity of the decree obtained in the rent suit ordering ejectment of the dar-mukuridar. *MADHOO PROSHAD SINGH v. PURSHAN RAM*

[I. L. R., 4 Calc., 520]

108. — *Priority of auction-purchasers—Sale set aside by an ex-parte decree and afterwards confirmed—Notice.*—The plaintiff and the defendant purchased the same tenure at successive sales, held in execution of two decrees under the provisions of s. 59 of Act VIII of 1869, for arrears of rent due in respect of different periods. Defendant's sale was first in point of time, but was set aside on the judgment-debtor obtaining an *ex-parte* decree against the defendant. The suit was, however, restored and ultimately dismissed, and the defendant's purchase remained undisturbed. In the meantime, however, after the *ex-parte* decree but before the dismissal of that suit, the tenure had been again sold for further arrears of rent, which had accrued before the defendant's purchase and was bought by the plaintiff. *Held* that the defendant's title must prevail, being prior in point of time, and that the defendant was under no obligation to discharge the arrears of rent for which the second decree was obtained, or to give notice of his purchase to the plaintiff. *RAM CHUNDER SADHU KHAN v. SAMIR GAZI*

I. L. R., 20 Calc., 25

109. — *Patni tenure, Sale of—Registration in zamindar's serishta—Rights of zamindar—Beng. Reg. VIII of 1819, ss. 5, 7—Bengal Tenancy Act (VIII of 1885), s. 13.*—A patni talukh was sold in execution of a decree, but the auction-purchaser, although he obtained possession, did not get himself registered in the zamindar's serishta. In a suit by the zamindar against the former holder of the patni for rent due for a period previous to the sale, *Held* that the suit lay against him, and that the rights of the zamindar were not affected by the existence of the remedy provided by s. 7 of Bengal Regulation VIII of 1819. *Lukhinarain Mitter v. Khetter Pal Singh Roy*, 13 B. L. R., 146, referred to. *SURENDRONATH PAL CHOWDHRY v. TINCOWRI DAS*

I. L. R., 20 Calc., 247

110. — *Liability of auction-purchaser for arrears of rent prior to purchase—Bengal Tenancy Act (VIII of 1885), ss. 65*

SALE FOR ARREARS OF RENT

—continued.

7. RIGHTS AND LIABILITIES OF PURCHASERS—continued.

and 169, cl. (c)—*Rent, Suit for.*—The plaintiffs sued the first five defendants for arrears of rent due in respect of a certain tenure, and obtained a decree on the 16th of April 1888. In execution of that decree, the tenure was sold on the 8th April 1891, the defendants 6, 7, and 8 being the auction-purchasers. On the 18th of April 1891 the plaintiffs sued all eight defendants for the arrears of rent which had become due between the 16th April 1888 and the 8th April 1891. *Held* that the auction-purchasers (defendants 6, 7, and 8) were not liable, the arrears of rent sued for having become due prior to their purchase. *FAEZ RAHAMAN v. RAMSUKH BAJPAI*

[I. L. R., 21 Calc., 169]

111. — *Sale on basis of decree on compromise—Auction-purchaser, Title of—Liability of purchaser for rent accruing due after his purchase, but before confirmation of sale—Effect of compromise as against purchaser—Rent, Accrual of—Bengal Tenancy Act, s. 53.*—A tenant, when sued for arrears of rent of a jote, compromised the case by executing a solehnama agreeing to pay rent at 13 annas per bigha on 4,300 bighas. Subsequently the jote was sold, in execution of a decree passed on the basis of the solehnama, and was purchased by the defendant on the 20th March 1889, the sale being confirmed on the 7th August 1889. In a suit instituted by the landlord against the auction-purchaser for arrears of rent for the whole year 1296 (13th April 1889 to 12th April 1890), *Held* that the purchaser was liable for the whole instalment of rent accrued due after the date of his purchase, but before the confirmation of the sale, notwithstanding that his title was not perfected until the latter date. Rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or, in the absence of any contract according to the general law laid down in s. 53 of the Bengal Tenancy Act. *Held* also that he was liable for rent under the terms of the solehnama irrespective of any question as to whether the quantity of land there mentioned was correct or not. *SATYENDRA NATH THAKUR v. NILKANTHA SINGH*

I. L. R., 21 Calc., 383

112. — *Bengal Tenancy Act (VIII of 1885), ss. 11, 12, and 13—Sale of a tenure in execution of a decree not for arrears of rent—Effect of non-payment of landlord's fee or the fee for service of notice of the sale on the landlord before the confirmation of sale.*—Under s. 13 of the Bengal Tenancy Act, when a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, and the landlord's fee prescribed by s. 12 of the said Act is not paid before the confirmation of the sale, the sale is invalid. *BABAR ALI v. KRISHNANANINI DAS*

[I. L. R., 26 Calc., 603]

113. — *Right of purchaser—Sale of tenant's interest by creditor—Subsequent sale by*

SALE FOR ARREARS OF RENT

—continued

7 RIGHTS AND LIABILITIES OF PURCHASERS—continued

landlord for arrears of rent—Right of purchaser
—The right, title and interest of a tenant in certain land having been attached sold and purchased in execution of a decree upon a mortgage by his creditor in 1874 the landlord, in pursuance of a notice under s. 39 of the Rent Recovery Act (Madras Act VIII of 1885) gave to the Civil Court's sale sold

due by the
being passed
there was
sale by the

landlord under the provisions of s. 35 of the Rent Recovery Act VIRAPPA NAYAK v KATHANA TALA VACHI I L R, 6 Mad, 428

114 ——— *Sale of occupancy holding at the instance of landlord in execution of money decree—Subsequent sale of the same for arrears of rent—Bengal Tenancy Act (VIII of 1885) s. 22—Damages—Refund of purchase money—Defendant No 10 the landlord in execution of a decree for money, put to sale the occupancy holding of an occupancy raiyat the defendant No 1, and having purchased it himself made a settlement of the same with defendants Nos 2, 3, and 4 the landlord subsequently brought a suit against defendant No 1 for recovery of rent due from him for the past years and brought to sale the same holding which was thereupon purchased by the plaintiff In a suit by the latter for recovery of possession—Held that the plaintiff did not acquire any title inasmuch as the landlord by his own act had brought the raiyat right of the defendant No 1 to a termination and there was no subsisting right in that defendant so much as the plaintiff could acquire by sale Held further that the plaintiff was entitled to get a refund of the purchase money from the landlord and that a separate suit for that purpose was not necessary RAM SARAN PODDAR v MAHOMED LATIF 3 C W N, 62*

115 ——— *Mortgage of dar-talukh—Its subsequent transformation into a patni talukh—Purchaser in execution of a decree for arrears of patni rent—Right of the purchaser*

principal defendants In a suit for possession of the

J) that the creation of a mortgage gives certain rights to the mortgagor over the mortgaged property, but it does not necessarily prevent third parties from dealing with the mortgagor still as the owner of the

SALE FOR ARREARS OF RENT

—continued

7 RIGHTS AND LIABILITIES OF PURCHASERS—concluded

property, nor is the mortgagee entitled in every case

principle JOTINDRA MOHUN PAL v GODADHUR MADAK 2 C W N, 29

8 SECOND SALE

116 ——— *Sale for prior arrears after sale for arrears of rent—Where a tenure has once been sold for its own arrears it cannot be again put up to sale for the arrears due on account of a previous period Lutfun v Meah Jan, 6 W. R. 112, followed PRANGOUR MOZOOMDAR v HIMANTA KUMARI DEBYA [I L R, 12 Calc, 597]*

9 SURPLUS PROCEEDS OF SALE

117 ——— *Right to surplus proceeds—Attachment in hands of Collector—The surplus proceeds of a sale made for default of payment of patni rent though under attachment by a Civil Court in the hands of the Collector continues to be the property of the patnidar until ordered to be paid away by an order from such Court SADFOOL LAH KHAN v LUCHMEERPUT SINGH DOOGUR [13 W R., 58]*

118 ——— *Priority—Surplus proceeds of sale under s. 59 Beng Act VIII of 1889—Decree against dar patnidar after sale of his tenure—A patnidar caused to be sold the*

patni rent due in respect of the period between April and October 1876 and having obtained a decree attached the surplus proceeds in the Collectorate,

SALE FOR ARREARS OF RENT —continued.

9. SURPLUS PROCEEDS OF SALE—continued.

119. ———— *Beng. Reg. VIII of 1819, s. 17, cl. (5)*—*Patni talukh—Attachment—Priority.*—The patnidar of a talukh granted a dar-patni to the defendants on the 10th of February 1859. The same patnidar afterwards mortgaged the patni talukh to the plaintiffs who obtained a decree on their mortgage on the 28th September 1874. The patni was sold for its own arrears on the 17th November 1876; and after payment of rent and all expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 4th of November 1876. On the 12th January 1877 the defendants instituted a suit against the patnidar, under cl. 5, s. 17, Regulation VIII of 1819, for compensation for the loss of the dar-patni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds; and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale-proceeds. In a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to the defendants' suit,—*Held* that the defendants' decree must, notwithstanding the plaintiffs' attachment, be satisfied out of the surplus sale-proceeds in priority to the plaintiffs' decree. *SURNOMOYEE DAS-SYA v. LAND MORTGAGE BANK OF INDIA*

[I. L. R., 7 Calc., 173 : 8 C. L. R., 341]

120. ———— *Sale of patni—Mortgage security, Conversion of—Surplus sale-proceeds, Charge of mortgagee upon—Transfer of Property Act (IV of 1882), s. 75.*—A patni talukh having been sold for arrears of rent under Regulation VIII of 1819, the surplus sale-proceeds held in deposit in the Collectorate were drawn out at intervals by the holders of money decrees against the patnidars. The plaintiff, who held a mortgage of the talukh, sued to recover from these decree-holders the amount of his unsatisfied claim. Two of the defendants pleaded that, over and above the amount taken by them, there remained in deposit sufficient money to satisfy the plaintiff, and that the other unsecured creditors who had drawn out this balance should alone be held liable. *Held* that the surplus sale-proceeds were to be regarded as the shape into which the plaintiff's security was converted, and as before such conversion the security could not be split up into parts, the plaintiff was entitled to realize the balance due to him out of the whole of the surplus, as otherwise his security would be diminished. *GOSTO BEHARY PYNK v. SHIB NATH DUTT* . L. L. R., 20 Calc., 241

121. ———— *Transfer of Property Act (IV of 1882), s. 73—Rights of purchasers—mortgage.*—S. 73 of the Transfer of Property Act only gives a right to the mortgagee over the residue of the sale-proceeds, and refers to cases where the law otherwise provided that the effect of the sale is to nullify a mortgage: it is not intended in any way to enlarge the interest of the purchaser at a sale for arrears of revenue or rent.

SALE FOR ARREARS OF RENT —continued.

9. SURPLUS PROCEEDS OF SALE—concluded.

Prem Chand Pal v. Purnima Dasi, I. L. R., 15 Calc., 546 referred to. *BENI PRASAD SINHA v. REWAT LALL* . I. L. R., 24 Calc., 746

122. ———— *Beng. Reg. VIII of 1819, s. 17—Distribution of surplus sale-proceeds—Claim by se-patnidar.*—A se-patnidar is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under Regulation VII of 1819. *MOTI LAL GHOSH v. BISSESSUR HAZRA* 3 C. W. N., 60

10. DEPOSIT TO STAY SALE.

123. ———— *Right to sue—Voluntary payment to stay sale—Act X of 1859, ss. 102, 103.*—A person making voluntary payments in his own name to stay a sale in execution of a decree against others could not sue under s. 102 or 103 of Act X of 1859 for the recovery of the money so paid by him. *AJDOOL WAHAB v. DRUMMOND*

[2 W. R., Act X, 48]

124. ———— *Party with recognized interest—Beng. Reg. VIII of 1819 s. 14, cl. 1.*—Cl. 1, s. 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the amount due, stay a sale of a patni, but only a party having a recognized interest in such patni. According to s. 6, even application for registration is not sufficient: that section provides what can legally be done if registration is refused. *KRISTO JEEBUN BUKSHEE v. MACKINTOSH* . W. R., 1864, 53

125. ———— *Sufficiency of interest—Suit to recover money deposited.*—The plaintiff's mother brought a suit to recover a portion of a talukh which she claimed under a will, and which she would be entitled to upon the death of the widow of the deceased owner. While the suit was pending, the talukh was put up for sale under Regulation VIII of 1819, and to prevent its being sold she paid the rent. The above suit abated by the death of the plaintiff's mother, and the plaintiff now sued the shareholders to recover the amount paid to save the talukh from sale. *Held* that the plaintiff's mother's interest in the talukh was such as entitled the plaintiff to recover the money she paid. *SHARODA KOOMABEE DOSSEE v. MOHINEE MOHUN GHOSH*

[20 W. R., 272]

126. ———— *Voluntary payment—Right of mortgagee to prevent sale of mortgaged property—Voluntary payment.*—The mortgagee of a patni talukh paid certain moneys to prevent the sale of such talukh for arrears of zamindari rent. *Held* that this was not a voluntary payment, and could not be so considered even in the case where the mortgagee, by a covenant in his mortgage-deed, had insured himself against loss by such sale. *Nogender Chunder Ghose v. Kaminez Dossi, 11 Moore's I. A., 241*, followed. *MOHESH CHUNDER BANERJEE v. RAM PURSONO CHOWDHRY*

[I. L. R., 4 Calc., 539 : 6 C. L. R., 280]

SALE FOR ARREARS, OF RENT

TO DEPOSIT TO STAY SALE—continued.

See DOLLARD & KAKKISHEIN STREET
17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 8

4 W. R., S. O. C Ref, 4

128 ————— Right of suit —

An under tenant who has saved the superior tenure

recover the amount deposited by him as a loan in an ordinary suit. *Amrita Devi v. Pashan Lal Das*

[4 B. L. R., B. B. 77]

S O U N I K D E R I A V P A N K H A N D O S E
[13 W. R. E. B. 1]

129. Right of suit— Reg VIII of 1819—Non registration of

lation for the registration of any vendor or donee. In 1865 it was held that the duty registered providing for mutation of names in the pastidars' books. No such mutation was ever effected by K., who was never the rent of In 1864, the zamindar proceeded to sell the patta under Regulation VII of 1819 thereupon K. in order to protect his under-tenure, deposited in the Collector's office on 17th November 1864, a sum of money, on which

due to I and U. It is put T and B refused to allow

the bench, the Court on 20th June 1860, on appeal, held that he was not

entitled, the deposit being merely a voluntary payment by K. On 30th October 1907 K brought a regular suit against S and L and R to recover the amount of the deposit, and obtained a decree, but it

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STATE FOR ADVANCE OF RENT

10 DEPOSIT TO STAY SALE—continued.

in the Collectorate. LUDHIANWAL DISTRICT &
KARNATA PAT SINGH 1207

13 B. M. F. C. 146: 20 W. M. 330
Affirming the decision of the High Court in S. C.

KHETTER PAUL SINGH & LOOKHNE NARAYAN MITTAL
[16 W. R. 125
OKHAY COOMAR CHATTERJEE & DINESH NATHAN
CHUND 29 W. R. 289

130. Payment made by sendee of dat-palmidas—Voluntary payment.—A

payment made by the vendor of the car purchased from an unlicensed dealer (notwithstanding the fact that the dealer cannot seek to deduct the amount and the loss due by him. The purchase price of the car was \$1,000.00.

§ 1 Ind. Jur., N. 317:6 W. B., Act X, B
 Payment of
 Reg. AII of
 raser of a pabul
 rent of the year

1987 (18/0) is approximately 100,000, and the number of purchases, the far-estimated had paid the amount of 100,000 of 1987 (18/0) 18 I for the year 1987 (18/0) in order to have the patent from being sold under Reg-lation of 1987 (18/0) and that the amount so paid 100,000

J. L. R., 8 Calo, 877; H. C. L. R., 87

132
Payment by day-
patindar-Beng Reg VII of 1816-Beng Act
VIII of 1863, s. 62-The zamindar of an estate, in
 which the plaintiff and defendant respectively had pur-
 chased patti and day patti features obtained decrees

The defendant's purchase was completed before the relevant time period for sale. In a suit by the defendant, she was paid Court by the defendant to protect the tenant from sale.

plaintiff argues that defendant's actions were negligent and caused plaintiff's injuries. Plaintiff seeks damages for medical expenses, lost wages, and pain and suffering. Defendant denies liability and argues that plaintiff's injuries were caused by its own negligence.

The court finds in favor of the plaintiff. The evidence shows that defendant was negligent and that its negligence caused plaintiff's injuries. Therefore, plaintiff is entitled to recover damages for its losses.

Dated at New York, New York, this 10th day of January, 1987.

John Doe
Plaintiff

Jane Smith
Defendant

Witness:

John Q. Public
Juror

Mary R. White
Clerk of Court

James K. Brown
Attorney for Plaintiff

Robert L. Green
Attorney for Defendant

Susan P. Black
Attorney for Plaintiff

David M. Blue
Attorney for Defendant

Elizabeth A. Red
Attorney for Plaintiff

Michael B. Yellow
Attorney for Defendant

Jennifer C. Purple
Attorney for Plaintiff

Christopher D. Grey
Attorney for Defendant

Alicia E. Pink
Attorney for Plaintiff

Daniel F. Orange
Attorney for Defendant

Stephanie G. Brown
Attorney for Plaintiff

Jonathan H. Green
Attorney for Defendant

Michelle I. Blue
Attorney for Plaintiff

Andrew J. Yellow
Attorney for Defendant

Nicole K. Purple
Attorney for Plaintiff

Ryan L. Grey
Attorney for Defendant

Ashley M. Pink
Attorney for Plaintiff

Justin N. Orange
Attorney for Defendant

Brittany O. Brown
Attorney for Plaintiff

Tyler P. Green
Attorney for Defendant

Danielle Q. Blue
Attorney for Plaintiff

Jordan R. Yellow
Attorney for Defendant

Alexis S. Purple
Attorney for Plaintiff

Nathan T. Grey
Attorney for Defendant

Samantha U. Pink
Attorney for Plaintiff

Ethan V. Orange
Attorney for Defendant

Haley W. Brown
Attorney for Plaintiff

Gabriel X. Green
Attorney for Defendant

Isabella Y. Blue
Attorney for Plaintiff

Liam Z. Yellow
Attorney for Defendant

Mia AA. Purple
Attorney for Plaintiff

Noah BB. Grey
Attorney for Defendant

Olivia CC. Pink
Attorney for Plaintiff

Oscar DD. Orange
Attorney for Defendant

Paisley EE. Brown
Attorney for Plaintiff

Quinn FF. Green
Attorney for Defendant

Rory GG. Blue
Attorney for Plaintiff

Sebastian HH. Yellow
Attorney for Defendant

Sophia II. Purple
Attorney for Plaintiff

Theodore JJ. Grey
Attorney for Defendant

Uma KK. Pink
Attorney for Plaintiff

Victor LL. Orange
Attorney for Defendant

Wendy MM. Brown
Attorney for Plaintiff

Xavier NN. Green
Attorney for Defendant

Yara OO. Blue
Attorney for Plaintiff

Zoe PP. Yellow
Attorney for Defendant

Adam QQ. Purple
Attorney for Plaintiff

Ava RR. Grey
Attorney for Defendant

Benjamin SS. Pink
Attorney for Plaintiff

Bella TT. Orange
Attorney for Defendant

Caleb UU. Brown
Attorney for Plaintiff

Chloe VV. Green
Attorney for Defendant

Cody WW. Blue
Attorney for Plaintiff

Diana XX. Yellow
Attorney for Defendant

Dominic YY. Purple
Attorney for Plaintiff

Emily ZZ. Grey
Attorney for Defendant

Evan AA. Pink
Attorney for Plaintiff

Fiona BB. Orange
Attorney for Defendant

Gavin CC. Brown
Attorney for Plaintiff

Grace DD. Green
Attorney for Defendant

Harvey EE. Blue
Attorney for Plaintiff

Heidi FF. Yellow
Attorney for Defendant

Henry GG. Purple
Attorney for Plaintiff

Iris HH. Grey
Attorney for Defendant

Jacob II. Pink
Attorney for Plaintiff

Julia JJ. Orange
Attorney for Defendant

Kane KK. Brown
Attorney for Plaintiff

Karen LL. Green
Attorney for Defendant

Kevin MM. Blue
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Kimberly NN. Yellow
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Kyle OO. Purple
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Leah QQ. Pink
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Leo RR. Orange
Attorney for Defendant

Liberty SS. Brown
Attorney for Plaintiff

Lucas TT. Green
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Madeline UU. Blue
Attorney for Plaintiff

Malik VV. Yellow
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Marissa WW. Purple
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Martin XX. Grey
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Maya YY. Pink
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Meagan ZZ. Orange
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Miguel BB. Green
Attorney for Defendant

Miranda CC. Blue
Attorney for Plaintiff

Mohammed DD. Yellow
Attorney for Defendant

Monique EE. Purple
Attorney for Plaintiff

Morgan FF. Grey
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Mya GG. Pink
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Richard YY. Orange
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Rickie ZZ. Brown
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Rocky DD. Purple
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Roy EE. Grey
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Ruby FF. Pink
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Travis HH. Blue
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Troy II. Yellow
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Tyra JJ. Purple
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Ursula MM. Orange
Attorney for Defendant

Vanessa NN. Brown
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Veronica OO. Green
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Vincent PP. Blue
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Vivian QQ. Yellow
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Walter RR. Purple
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Wayne SS. Grey
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Weaver TT. Pink
Attorney for Plaintiff

William UU. Orange
Attorney for Defendant

Willie VV. Brown
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Wm. XX. Green
Attorney for Defendant

Wyatt YY. Blue
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Xavier ZZ. Yellow
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Xena AA. Purple
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Xosha BB. Grey
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Yusef DD. Orange
Attorney for Defendant

Zachary EE. Brown
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Zoey FF. Green
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Attorney for Plaintiff

Zoe LL. Green
Attorney for Defendant

Z

133. Landlords—Notice of title to tenants—Bengal
Reg VIII of 1819, s 13—A dar postdar who has
! and a deposit in order to buy the sale of the superior
tenure under s 13, Regulation VIII of 1819,
and has come into possession of the tenure,
is entitled to the profits of it as bound to give notice

SALE FOR ARREARS OF RENT

(continued)

9. SURPLUS PROCEEDS OF SALE—continued.

119. *Beng. Reg. VIII of 1819, s. 17, cl. (5)*—*Patni talukh*—*Attachment*—*Priority*.—The patnidar of a talukh granted a

1859. The same patnidar afterwards mortgaged the

patni talukh to the plaintiffs, who obtained a decree

on their mortgage on the 28th September 1874.

The patni was sold for its own arrears on the 17th

November 1876; and after payment of rent and all

expenses, there remained a surplus in the hands of

the Collector, which was attached by the plaintiffs

in execution of their decree on the 11th of November

1876. On the 12th January 1877 the defendants

instituted a suit against the patnidar, under cl. 5,

s. 17, Regulation VIII of 1819, for compensation

for the loss of the dar-patni, and obtained a decree,

which the Court directed should be satisfied out of

the surplus sale-proceeds; and the Collector, notwith-

standing the plaintiffs' attachment, allowed the

defendants to obtain the amount decreed out of the

surplus sale-proceeds. In a suit by the plaintiffs to

recover the amount paid for compensation, on the

ground that the plaintiffs' attachment was prior to

the defendants' suit,—*Held* that the defendants'

decree must, notwithstanding the plaintiffs' attach-

ment, be satisfied out of the surplus sale-proceeds in

priority to the plaintiffs' decree. *SURMONOMER DAS**vs. LAND MORTGAGE BANK OF INDIA*120. *T. L. R., 7 Cal., 173; 8 C. L. R., 341**Sale of patni—Mortgage security, Conversion of—Surplus**sale-proceeds, Charge of mortgagee upon—**Transfer of Property Act (IV of 1882),**s. 78.*—A patni talukh having been sold for

arrears of rent under Regulation VIII of 1819, the

surplus sale-proceeds held in deposit in the Collec-

torate were drawn out at intervals by the holders

of money decrees against the patnidars. The

plaintiff, who held a mortgage of the talukh, sued

to recover from these decree-holders the amount of his

unassisted claim. Two of the defendants pleaded

that, over and above the amount taken by them, there

remained in deposit sufficient money to satisfy the

plaintiff, and that the other unsecured creditors who

had drawn out this balance should alone be held

liable. *Held* that the surplus sale-proceeds were to

be regarded as the share into which the plaintiffs'

security was converted, and as before such conversion

the security could not be split up into parts, the

plaintiff was entitled to realize the balance due to

him out of the whole of the surplus, as otherwise his

security would be diminished. *GOSTO BERNAY PYNE**vs. SHRI NATH DUTT . . . T. L. R., 20 Cal., 241*121. *Transfer of Property Act (IV of 1882), s. 73—Rights of**purchasers—mortgage.*—S. 73 of the Transfer of

Property Act only gives a right to the mortgagee

over the residue of the sale-proceeds, and refers to

cases where the law otherwise provided that the

effect of the sale is to nullify a mortgage: it is not

intended in any way to enlarge the interest of the

purchaser at a sale for arrears of revenue or rent.

SALE FOR ARREARS OF RENT

(continued)

9. SURPLUS PROCEEDS OF SALE—concluded.

*Prem Chand Pal v. Purnima Das, T. L. R., 15**Cal., 546* referred to. *BENT PUGHAD SINHA v.**RAWAT LAL. . . T. L. R., 24 Cal., 746*122. *Beng. Reg. VII of 1819, s. 17—Distribution of surplus sale-**proceeds—Claim by se-patnidar.*—A se-patnidar

is not entitled to a share of the proceeds of a sale

of the patni for arrears of rent held under Regu-

lation VII of 1819. *MORI LAL GHOSH v. BISSASSUR**HAZRA . . . 3 C. W. N., 60*

10. DEPOSIT TO STAY SALE.

123. *Right to sue—Voluntary pay-**ment to stay sale—Act X of 1859, ss. 102, 103.*—

A person making voluntary payments in his own

name to stay a sale in execution of a decree against

others could not sue under s. 102 or 103 of Act X of

1859 for the recovery of the money so paid by him.

*ABDOOL WAHAB v. DRUMMOND*124. *Party with recognized in-**terest—Beng. Reg. VII of 1819 s. 14, cl. 1.*—

CL. I, s. 14, Regulation VIII of 1819, does not

contemplate that any party may, by depositing the

amount due, stay a sale of a patni, but only a party

having a recognized interest in such patni. Accord-

ing to s. 6, even application for registration is not

sufficient: that section provides what can legally be

done if registration is refused. *KRISTO JEEBUN**BUKSHEE v. MACKINTOSH . . . W. R., 1864, 53*125. *Sufficiency of interest—**Suit to recover money deposited.*—The plaintiffs

mother brought a suit to recover a portion of a talukh

which she claimed under a will, and which she would

be entitled to upon the death of the widow of the

deceased owner. While the suit was pending, the

talukh was put up for sale under Regulation VIII of

1819, and to prevent its being sold she paid the rent.

The above suit abated by the death of the plaintiffs'

mother, and the plaintiff now sued the shareholders

to recover the amount paid to save the talukh from

sale. *Held* that the plaintiffs' mother's interest in

the talukh was such as entitled the plaintiff to re-

cover the money she paid. *SHARODA KOOMARIE**DOSSER v. MOHINDER MOHUN GHOSH*126. *Voluntary payment—Right**of mortgagee to prevent sale of mortgaged property**—Voluntary payment.*—The mortgagee of a patni

talukh paid certain moneys to prevent the sale of

such talukh for arrears of zamindari rent. *Held*

that this was not a voluntary payment, and could not

be so considered even in the case where the mort-

gaged, by a covenant in his mortgage-deed, had in-

sured himself against loss by such sale. *NOGENDER**CHUNDER GHOSH v. KAMNIES DOSS, 11 Moore's I. J.,**241, followed. MOHESH CHUNDER BANERJEE v.**RAM PURSONO CHOWDHURY**T. L. R., 4 Cal., 539; 6 C. L. R., 280*

SALE FOR ARREARS, OF RENT

—continued.

See DEONAND v. HAKHIMNATH SINGH

[L. I. R., 7 Cal., 648

187. Sale of tenant

10. DEPOSIT TO STAY SALE—continued.

130. CHUND

OKHOT COOHAR CHATTARJEE v. DEEPAI MANTAB

[15 W. R., 125

KNITTER PAUL SINGH v. LOKHNA NARAY MITTER

Althoug the decision of the High Court in S. C.

[13 R. I. R., P. C., 146; 20 W. R., 380

in the Collectorate. LUCKHIMNATH MITTER v.

10. DEPOSIT TO STAY SALE—continued.

140. Payment made

131. CHUND

OKHOT COOHAR CHATTARJEE v. DEEPAI MANTAB

[15 W. R., 125

KNITTER PAUL SINGH v. LOKHNA NARAY MITTER

Althoug the decision of the High Court in S. C.

[13 R. I. R., P. C., 146; 20 W. R., 380

in the Collectorate. LUCKHIMNATH MITTER v.

10. DEPOSIT TO STAY SALE—continued.

140. Payment made

131. CHUND

OKHOT COOHAR CHATTARJEE v. DEEPAI MANTAB

[15 W. R., 125

KNITTER PAUL SINGH v. LOKHNA NARAY MITTER

Althoug the decision of the High Court in S. C.

[13 R. I. R., P. C., 146; 20 W. R., 380

in the Collectorate. LUCKHIMNATH MITTER v.

10. DEPOSIT TO STAY SALE—continued.

140. Payment made

131. CHUND

OKHOT COOHAR CHATTARJEE v. DEEPAI MANTAB

[15 W. R., 125

KNITTER PAUL SINGH v. LOKHNA NARAY MITTER

lation for the registration of any rades or donee in 1860 § sold the darpatul lease to A. the deed of sale which was duly registered providing for mutation of names in the particular books No such recognition was ever effected by K., who was never the darpatul being paid in the name of S. In 1864, the rent due from the patidar being in arrears, the zamindar proceeded to sell the patul under Regulation VII on 17th the sale was effected. A. claimed to set off the amount deposited in the Collectorate against the rent payment of his darpatul rent, claimed to set off the amount deposited in the Collectorate against the rent due to L and K. This L and K refused to allow, and they brought a suit in the Collectorate Court against S and his surties to recover the arrears of rent. In that suit K interposed, claiming the benefit of the set off, to which however, the High Court, on 26th June 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by A. On 30th October 1867 K brought a regular suit against S and L and K to recover the amount of the deposit, and obtained a decree, but the

to the end of 1284 Nomo Goyal Sigan v. Sanyas Bhusanpaya [L. I. R., 8 Cal., 877 N. C. L. R., 97 182 Payment by darpatidar—Beng Reg VII of 1819—Beng Act VII of 1869, § 62—The zamindar of an estate, in which the plaintiff and defendant respectively had purchased darpatul and darpatul tenures, obtained decrees for arrears of rent accruing before their purchases, though one of the decrees was obtained subsequently to defendant's purchase, and in execution of these decrees he advertised the darpatul for sale, and the amounts due were paid into Court by the defendant to protect the tenures from sale. In a suit by the plaintiff against the darpatidar for arrears of rent accruing due and subsequently to the defendant's purchase,—Held that the defendant was on the construction of a 13 of Regulation VIII of 1819 and a 62, Bengal Act VIII of 1869 entitled to set off such payments against the plaintiff's claim. Dohopad Sanyas v. Sanyas Bhusanpaya, L. I. R., 8 Cal., 877, followed. L. I. R., 13 Cal., 331 Buximas Bux

SALE FOR ARREARS OF RENT

—continued.

10. DEPOSIT TO STAY SALE—continued.

plaintiff paid the amount of the decree to save the tenure from sale. In a suit brought to recover the amount, *Held* that the payment by the plaintiff was, as far as the defendant was concerned, a voluntary payment. Mere inconvenience without risk of actual damage is not sufficient to take away the voluntary character of the payment. *RAM BAKSH CHETANAI v. HRIDOY MANI DEBI* [8 B. L. R., 10 note: 10 W. R., 448]

139.

money paid.—A patti tenure which had been attached by G in execution of a decree against D was claimed by S, whose claim was allowed. Upon this G instituted a suit against S and others to have the patti declared to be the property of D, and, being successful, had the patti sold in execution of his decree against D, became the purchaser, and got possession. After this, he saved the estate from being sold for arrears of rent which had accrued prior to his purchase, by paying up the amount due. He subsequently sued D and S to recover the amount so paid. S, who had meantime appealed to the Privy Council, succeeded in obtaining a reversal of the decree under which G had sold the patti; but this reversal did not take place before G had instituted the suit for recovering the arrears he had liquidated. *Held* that G was entitled to recover from S the amount which had been paid by him to save the patti from being sold. *GOVAT CHUNDRA CHOKKABUTY v. UDOOD LALL DEY* [10 W. R., 115]

[10 W. R., 115]

140.

Suit to recover money paid.—The plaintiff purchased at an execution sale a share of K's tenure which had been attached on account of a money-decree. Subsequently the whole tenure was advertised for sale in execution of a decree for arrears of rent. On applying to the Munsif, he was told that, if he deposited the whole amount due, the sale would be stayed. He did so and prevented the sale. He now sued K to recover the amount deposited. *Held* that the payment was not their officious nor voluntary, and that K, who had enjoyed the profits of the land, was equitably liable for the sum paid to give it from sale. *KHETTER MOHUN BANERJEE v. HAHADHUT CHATTERJEE* [19 W. R., 287]

141.

tender.—*Beng. Reg. VII of 1819.*—*Kare, J.*—*A unconditional*

money paid.—The plaintiff purchased an estate at an auction-sale in execution of a decree against the defendant, who was in possession, and after his purchase obtained possession on 6th April 1866. While he was in possession, one K, the patti-dar, had become due. During the defendant's possession and before the plaintiff's purchase, and in execution of the decree he obtained in this suit, the estate in possession of the plaintiff was attached and ordered by the Collector to be sold; whereupon the

142.

mindar.—*Beng. Reg. VII of 1819, s. 13.*—*Payment to stay final sale.*—The direction in s. 13 of the Regulation VII of 1819, that money paid into Court by a talukdar in order to stay the final sale shall be deducted from any claim of rent that may at the time be pending on account of the year or month

SALE FOR ARREARS OF RENT

—continued.

10. DEPOSIT TO STAY SALE—continued.

of his title to the raiyats. In the absence of such notice, he cannot recover from them rents already paid by them to the patti-dar. *NIMONKE ROY v. HITS* [4 W. R., Act X, 38]

134.

shikmdar.—*Money paid to preserve estate from sale.*—A shikmdar is not entitled to recover money voluntarily paid by him to preserve an estate from sale. *POORNO CHUNDER DOSS CHOWDHRY v. SAKH-NATH GOOPTO* [6 W. R., 173]

Right to contribution from co-shares.—A shareholder who pays up arrears of rent due from the whole of the tenure in order to save it from sale in execution is entitled to recover contribution from other shareholders who were in possession during the period within which the arrears accrued, even though the tenure should be in the name of another and the decree be nominally against such other alone. *ASUDOO LALL v. MONOHU DOSS* [22 W. R., 581]

136.

Compulsory payment.—*Right to recover.*—Plaintiff, to save the patti from sale for arrears of rent of a former year which had been adjudged by an apparently valid decree to be due to the defendant, paid the money. *Held* that the payment was made under such circumstances as entitled the plaintiff to recover back the money from the defendant. *ANDREW v. LAR-MOOR* [2 Ind. Jur., O. S., 4: 1 May, 309]

137.

Suit to recover money paid.—*Beng. Reg. VII of 1819, s. 13, cl. 3.*—*Beng. Act VII of 1865, s. 6.*—*A patti-dar, in execution of a decree for rent against his mirasidari, attached certain property of his, including a parcel of land belonging to the plaintiff, who, to save that portion, paid the whole amount due, and sued the mirasidari to recover the portion he ought to have paid. The suit was dismissed, no obligation on the plaintiff to pay having been shown. She appealed, alleging that her portion was within and subordinate to the holding of the mirasidari, and to sell would have jeopardized her holding. *Held* that the case was rightly remanded by the lower Appellate Court, but that the issue to be tried was whether the plaintiff was a party who came under the provisions of Regulation VII of 1819, more particularly with cl. 3. *LUCKHEE PATA DEBIA v. BRINDABAN DEY* [12 W. R., 313]*

138.

Suit to recover money paid.—The plaintiff purchased an estate at an auction-sale in execution of a decree against

—continued

10 DEPOSIT TO STAY SALE—continued

for which the notice of sale may have been published, is satisfied by payment, not into Court, but to the zamindar. If a strictly literal construction were put upon the words "into Court" no payment effectual to stay the sale could be made, for "the Court" has nothing to do with these sales, which are managed by the Collector, "Tanjav District" SHAMA CHENNAI MITTER. I. L. R., 8 Calo, 864

143. *Nature of pay*
1565, s. 6—Money deposited to protect from sale a tenure advertised under the provisions of Act VIII of 1865 must, under s. 6, be considered as a loan made to the proprietor of the tenure, which becomes security to the depositor, who is entitled, on applying, to obtain immediate possession in order to recover the amount from any profits belonging to the tenure KARTON SUBBAN v. BIDOMATH SANKAR [10 W. R., 205

144. *Position of person making payment—Beng Reg VII of 1819—Suit for share of paternal estate—Mortgagee—Plaintiff claim*
ed an eight annas share of a patti as purchased by the official assignee of an insolvent, D, whom the Principal Sudder Ameen found to have been owner in his own right by inheritance of the share of the patti of which defendant's ancestor, G, having deposited arrears of rent, was in possession as granted under the provisions of Regulation VIII of 1819. Held that G was substantially in the same position as a mortgagee in possession under an ordinary mortgage, and that plaintiff, as a purchaser from

from the usufruct of the tenure," even though this had not been "established in a suit instituted for the purpose." HOUSTON CHURCH BROTHERS v. TARA CHAND HANJESS [11 W. R., 367

11 SETTING ASIDE SALE

(a) GENERAL CLASSES

146. *Civil Procedure Code*
(1882), s. 810A—*Civil Procedure Code Amendment Act (V of 1894)*—Bengal Tenancy Act (VIII of 1885), s. 174—S. 310 A of the Code of Civil Procedure applies to the sale of a tenure in execution of a decree for its own arrears JAYANARAYAN GANAGUT v. KATI KRISHNO THAKUR. I. L. R., 23 Calo, 383

KRISHNADHAR MAHA v. DAMAYANTI DEVI [I. L. R., 23 Calo, 386 note
BINAY LAL SEAL v. HUSSON CHUDHARI PAUL [I. L. R., 23 Calo, 386 note
BUDGONIMAN HADAR v. KADAKNATH MONDAL [I. C. W. N., 114

—continued.

11. SETTING ASIDE SALE—continued.

146. *Order under s. 310, Civil Procedure Code, 1892—Notice to purchaser—An auction purchaser is entitled to a notice before an order is made under s. 310A BUDGONIMAN HADAR v. KADAKNATH MONDAL [I. C. W. N., 114*

147. *S. 310A of the Civil Procedure Code does not apply to sale under Act X of 1859, as the Code of Civil Procedure applies only up to the sale, and not after it BANIK CHANDRA GHOSH v. AKARITA CHAMAN PATRA [3 C. W. N., 127*

148. *Beng Reg VIII of 1819, Application of s. 8, Regulation. MONJOMUK SINGH v. WATSON & Co*
Regulation. MONJOMUK SINGH v. WATSON & Co
149. *Beng. Reg. VIII of 1819, s. 8, Construction of "Residing in neighbourhood"*
the neighbourhood" in Reg. VIII of 1819, s. 8, the Regulation does not make it imperative that the attesting witnesses shall be residents of the village, but may be taken to include men living within a short distance of the culchery MONJOMUK SINGH v. WATSON & Co [W. R., 1884, 382

150. *Substantive persons*
151. *Service of notice—The provisions of "Substantive persons"*
152. *Substantive persons*
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SALE FOR ARREARS OF RENT

11. SETTING ASIDE SALE—continued.

156. *Beng. Reg. VIII of 1819, s. 8, cl. 2—Proof of publication of notice before sale of palm taluk for arrears of rent.*—The due publication of the notices prescribed by Regulation VIII of 1819, s. 8, cl. 2, forms an essential part of the foundation on which the summary power to sell a palm taluk for non-payment of rent is exercised by the zamindar, who, when instituting this proceeding, is exclusively responsible for such publication being regularly conducted. Although objection to the form of the receipt, and the absence of the receipt itself, need not be regarded, if the fact of the publication of the notices having been made is not matter of controversy (as held in *Sona Bibee v. Lalchand Chowdhry*, 9 *W. R.*, 242), yet where that fact was in doubt owing to the evidence of it not having been secured according to the provisions of the Regulation—a result due to the neglect of those representing the zamindar,—the finding of the High Court that due publication had not been established by such proofs as were forthcoming was maintained by the Judicial Committee. *MAHARAJAN OR BURDWAN v. TARASUDHARI DEBI* [1. *L. R.*, 9 Cal., 619; 13 C. *L. R.*, 84; 1. *L. R.*, 10 I. A., 19]

157. *Proof of publication of notice—Beng. Reg. VIII of 1819, s. 8—Irregularity in sale—Suit to set aside sale.*—It is essential to the validity of a sale, held under Regulation VIII of 1819, of a palm estate for arrears of rent, that the notices of sale prescribed by cl. 2, s. 8 of the Regulation, should have been all duly and regularly published as therein directed. *BAIKRANTHA NATH SINGH v. DHIRAJ MAHARAJ CHAND* [9 B. *L. R.*, 87; 17 *W. R.*, 447]

HABANATH GUPTA v. JAGANNATH ROY CHOWDHRY. 9 B. *L. R.*, 89 note; 11 *W. R.*, 87

And as to what amounts to publication of notice. *RAJAB CHANDRA BANERJEE v. BRAJANATH KUNDU CHOWDHRY* [9 B. *L. R.*, 91 note; 14 *W. R.*, 489]

158. *Beng. Reg. VIII of 1819, s. 8, cl. 2—Formalities prescribed in that section for due publication of the notice of sale.*—In cases where the due publication of the notice is in controversy, it is incumbent upon the landlord to show that the formalities prescribed by s. 8 of Regulation VIII of 1819 have been complied with. *MAHARAJAH OF BURDWAN v. TARASUDHARI DEBI*, 1. *L. R.*, 9 Cal., 619; 1. *L. R.*, 10 I. A., 19, and *MAHARAJ OF BURDWAN v. KRISHNA KAMINI DASI*, 1. *L. R.*, 14 Cal., 365; 1. *L. R.*, 14 I. A., 20, referred to. *Sona Bibee v. Lalchand Chowdhry*, 9 *W. R.*, 242, explained. *BEJOY CHAND MAHARAJ v. AMRITA LATI MUKERJEE*. 1. *L. R.*, 27 Cal., 308

159. *Ground for setting aside sale—Non-service of notice.*—The fact of no notice having been served in the month of sufficient ground for setting aside a sale for arrears of

SALE FOR ARREARS OF RENT

11. SETTING ASIDE SALE—continued.

living and well known in the neighbourhood, may properly be considered a "substantial person" within the meaning of cl. 2, s. 8 of the Regulation. It is too limited a construction of that clause to hold that the word "substantial" must be taken to mean a wealthy man from whom damages could be recovered by the padidar, supposing the attestation to be false. *RAMSABOR BOSE v. KAMINER KOOMAR BOSE* [14 B. *L. R.*, 394]

S. C. RAJ SARKAR BOSE v. MONMOLHINKER DOSSE [1. *L. R.*, 2 I. A., 71; 23 *W. R.*, 113]

152. *Substantial persons—Suit to set aside sale for irregularity—Non-service of notices—Omission to tender rent.*—In a suit to set aside the sale of a palm for arrears of rent under Regulation VIII of 1819, on the ground that proper notices were not sent, served, and published under s. 8, cl. 2, the objection in order to succeed must be one of substance and not merely of form. The requirements of the Regulation as to the service of the istahar, and the signing of the receipt by substantial persons, may be held to have been substantially performed where the persons signing are such as are usually expected to attest such a document, persons who are treated with consideration, e.g., jameens, moonkeers, chowkidars. *PTAMBER PANDA v. DAMODUR DOSSE*. *DASSAR v. PTAMBER PANDA*. 24 *W. R.*, 129

153. *Service of notice of sale—Beng. Reg. VIII of 1819, s. 8, cl. 2—Non-service of notice, Effect of, on sale.*—Where a Court finds that the notice prescribed in cl. 2, s. 8, Regulation VIII of 1819, has been duly served, it need not find whether the person who served the notice complied with all the directions of the Regulation as to what should be done in verification of such service. Omission to comply with those directions does not vitiate a sale under the Regulation, provided notice is duly served. *SONA BEBEE v. LATI CHAND CHOWDHRY*. 9 *W. R.*, 242

154. *Proof of service—Onus probandi—Evidence Act, s. 106.*—In a suit against a zamindar to reverse the sale of a palm tenure held under Regulation VIII of 1819, on the ground of non-service of notice, the onus of proving service lies on the defendant, according to the spirit of s. 106 of the Evidence Act. *DOORGA CHURN SIVMA CHOWDHRY v. NATUNOORDHAR*. 21 *W. R.*, 397

155. *Proof of service—Beng. Reg. VIII of 1819, s. 8, cl. 2—Publication.*—Although the provisions of s. 8, cl. 2, of Regulation VIII of 1819, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is nevertheless absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in the strict compliance with the directions given in the same clause and section of the Regulation. *BHUG-
WAN CHUNDER DASS v. STUPIN ALTY* [1. *L. R.*, 4 Cal., 41; 2 C. *L. R.*, 357]

SALE FOR ARRAHNS OF RENT

—continued—

11. SETTING ASIDE SALE—continued.

"notual" is opposed to the sudden custody of the zamindar, and refers to the ordinary estate, which is the subject of the sale-proceedings. Where a zamindar, selling the tenure of a defaulting partner under the Regulation, had caused to be struck up the requisite petition and notice at the Collector's

nor had published it at any other place upon the land of the defaulters. *—Held* that the zamindar had not observed a substantial part of the prescribed process, and that this was for the defaulting partner, "a sufficient plea" within the meaning of the Regulation.

tion MANABAKI OR BUDWAK, KANISHKA KANTHI DAST. I. T. R., 14 Cal., 366

MANABAKI OR BUDWAK, MINOTIOR SINGH [C. B., 14 I. A., 13

See ANANIVILLA KMAN BHADOO, I. BHAKTI CHUNN MOZOOMDAR. I. T. R., 17 Cal., 474

164. *—Suit for reversal of sale—*

Where, in a suit to set aside a patent sale under Regulation VIII of 1819, it was proved that the notice of sale was first struck up in the custody of the zamindar (the mahal having been let out in 1798 by the patentee), and, on the refusal of the zamindar to give a receipt of service, it was taken down, and subsequently personally served on the defaulting partner at his house, which was at some distance from the patent mahal. *—Held* that the object of the provisions in Regulation VIII of 1819 as to service of notice of sale is not only to give notice of sale to the defaulter, but also to the under tenant, and to advertise the sale on the spot for the information of intending purchasers, but though those provisions had not been strictly complied with, yet as the plaintiff (the partner) did not allege that in consequence of the defective publication there was

166. *Publication of*

is for setting aside the sale *Mykanta Nath Sing v. Dhany Mohabab Chand Bahadur, 9 I. T. R., 57*, commented on and distinguished *Gowran Lal Singh v. Joodhistera Hazra* I. T. R., 25 W. R., 141

SALE FOR ARRAHNS OF RENT

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11. SETTING ASIDE SALE—continued.

rent NGENDRO CHUNDER GHOSH v. NGENDRO HUPA. 16 W. R., 17

TANA CHAND BHISWA v. KAN JAKRUK MOOSTAZER 123 W. R., 203

160. *—Notice of sale. Publication of—*

In a case of a sale under Regulation VIII of 1819, where the patent was a small piece of land, upon which there was no town or village or custody of any kind, and the poem struck up the notice in the Collector's office and also at the under custody of the zamindar, and obtained the receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the provisions of the law regarding notice. *—Held* that the notice was not substantially complied with, and that the zamindar had not observed a substantial part of the prescribed process, and that this was for the defaulting partner, "a sufficient plea" within the meaning of the Regulation.

161. *—Beng. Reg. VIII*

124 W. R., 36

in which the defendant's gomastha was transacting and did habitually transact business, than at the place

Does alias NOKAN BABOO v. BIRNO CHUNN BOY 120 W. R., 132

162. *—In the case of a sale of a patent*

tably for arrears of rent, so long as the custody at which notice on the defaulter, as required by Regulation VIII of 1819, is served, is an ad-

present one in which all the business of the defaulting

163. *—Beng. Reg. VIII of 1819, s. 8—*

121 W. R., 369

defaulter] Regulation

at the principal town or village within the taluk.

MANABAKI OR BUDWAK v. KANISHKA KANTHI DAST. I. T. R., 8 Cal., 331; 13 C. T. R., 427

land of the defaulting partner, meaning the land

which is to be sold for arrears of rent, the copy or extract of such part of the notice of sale as may

apply to the tenure in question must be published in

SALE FOR ARREARS OF RENT

—continued.

11. SETTING ASIDE SALE—continued.

Good as far as the zamindar was concerned, and therefore the suit as against him must be dismissed with costs; and that as against B the parties were in exactly the same position as before the sale, B being a constructive trustee for A. *Sona Beebe v. Lal Chand Chowdhry*, 1 W. R., 242, and *Koylash Chander Banerjee v. Kali Prosunno Chowdhry*, 16 W. R., 60, cited and followed. *Jotendra Mohun Tagore v. Debendro Monre*, 2 C. L. R., 419.

169. *Beng. Reg. VIII of 1819, cl. 3, ss. 8, 14—Patn sale—Notices. Publication of—Ostun sale.—It is imperative that the notices referred to in cl. 3, s. 8 of Regulation VIII of 1819, be published previously to the 15th Kartick. Non-compliance with such direction is a "sufficient plea" within the meaning of s. 14 of the Regulation for reversal of a sale held thereunder. *Mattunge Churn Mitter v. Moortury Churn Ghose*, I. L. R., 1 Cal., 175; 24 W. R., 453, dissented from. *Surbanooy Debbar v. Garia Chunder Mottra*, I. L. R., 18 Cal., 363.*

170. *Beng. Reg. VIII of 1819, s. 8—Service and publication of notice of sale—Irregularities in preliminarys to sale—Petition for sale—Certificate of Munsif when service is sworn to before him—Form of notice of sale in mid-year sales for six months' arrears.—All the requirements in cl. 2, s. 8 of Regulation VIII of 1819, must be imported into cl. 3 of that section *mutatis mutandis*. Where therefore the zamindar is proceeding under cl. 3 to obtain a mid-year sale for six months' arrears of rent, the service of notice of sale is a condition precedent to the sale being held. Such notice must show, as provided by that clause, that the sale may be prevented by payment of the whole of the balance due, or of three-fourths of such balance. In such a case a notice which stated that the sale would take place unless the whole of the balance was paid as if the zamindar was proceeding under cl. 2 for the whole years arrears was held to be a bad notice, and a non-compliance with a substantial requirement of the Regulation such as to justify the reversal of the sale. The publication of the petition to the Collector containing a specification of the balance of rent due, by sticking it up in some conspicuous part of the cutchery as required by cl. 2, s. 8 of the Regulation, is not a substantial portion of the process to be observed by the zamindar previous to a sale for arrears of rent; non-compliance with that provision therefore is not a ground for setting aside the sale. For the same reason, the non-presentation of the petition on the precise day (1st Kartick) specified in cl. 3, s. 8, affords no ground for setting aside the sale. The presentation of the petition on the 2nd Kartick when the 1st was a Sunday was held to be a sufficient compliance with the section. The words "certificate to which effect" in the portion of cl. 2, s. 8, relating to the procedure in case of refusal by the village people to attest the publication of the notice of sale, mean a certificate to the effect*

agent. The object of the Regulation is to make known to the holders of under-tenures and ryots and the residents of the place that the patni will be sold if the arrears are not paid off within the time specified, and if the notice is not stuck up in the cutchery, as prescribed by the Regulation, there is such a material irregularity in the publication as will avoid the sale. *Gobind Lall Seal v. Chand Hurry Maitry*, I. L. R., 9 Cal., 172.

166. *Beng. Reg. VIII of 1819, s. 8—Publication of proof of service—Suit to set aside sale.—Compliance with the directions in Regulation VIII of 1819 as to service of notice is essential to the validity of a sale under that Regulation. Where there was evidence of service upon the defaulter personally, but not of service at his cutchery,—*Held* that this was not sufficient, and that the sale must be set aside. *Maharaj of Burdwan v. Tarasundar Deb*, I. L. R., 10 I. A., 19; I. L. R., 9 Cal., 619, and *Maharaj of Burdwan v. Kristo Kamini Das*, I. L. R., 9 Cal., 981, followed. *MAHOMED ZAKIR v. ABDUL HAKIM*, I. L. R., 12 Cal., 67.*

167. *Patn tenure—Beng. Reg. VIII of 1819, s. 8, cl. 2, and s. 14—Date of publication of notice.—The fact that the receipt of the notice of sale was dated the 15th of Bysack, and therefore did not show that the notice had been published at some time "previous to that day," so as to satisfy the provisions of s. 8, cl. 2, of Regulation VIII of 1819, was held not to be sufficient ground for setting aside the sale of a patni tenure for arrears of rent. There being nothing in the receipt to show the date on which the notice was published, no injury to the plaintiff having been proved, and it appearing that more than the time prescribed by the Regulation had elapsed before the sale actually took place, the Court refused to set aside the sale. It would not be a "sufficient plea" within the meaning of s. 14 that the receipt had been obtained, or the notification published, on, instead of previous to, the 15th of Bysack. *MATUNGEE CHURN MITTER v. MOORTRY CHURN GHOSE*, I. L. R., 1 Cal., 175; 24 W. R., 453.*

168. *Beng. Reg. VIII of 1819, s. 8—Benami purchase—Validity of sale.—A and B were co-sharers of a patni which was sold for arrears of rent by the zamindar and purchased by C. In a suit by A against B C, and the zamindar, the plaintiff alleged (1) that no sufficient notice had been given, and (2) that C purchased benami for B. *Held*, on the question of notice, that once it was found that the notice had been posted up in the cutchery of the defaulter in accordance with cl. 2, s. 8, Regulation VIII of 1819, it was not essential to the validity of the sale that any other notice should have been given to the defaulters themselves, or that the service should have been verified in the manner directed by the section. *Held* also, the benami purchase having been proved, that the sale must be considered*

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continued.

11. SETTING ASIDE N SALE—continued.

1. **Содержание**
 2. **Введение**
 3. **Глава I. Общие положения**
 4. **Глава II. Организация и структура**
 5. **Глава III. Основные задачи и функции**
 6. **Глава IV. Методы и средства**
 7. **Глава V. Результаты и выводы**
 8. **Заключение**
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 10. **Приложение**

NOTES
of the
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sion

LT. H., JR., 18 CALO, 888

173. Beng. Reg.

notice in the Collector's category—Non-published notices in the Collector's category—Notice published in manner prescribed, effect of, on validity of sale of a patent tenure—"Sufficiently published"—The selling up or publication in a complete part of the Collector's category of a notice in accordance with the provisions of cl. 2 of s. 8 of Regulation VIII of 1879 is essential to the validity of a sale of a patent tenure under that Regulation.

Where a notice of sale, instead of being struck up and published in some conspicuous part of the Collector's category as required by law, was in accord with the practice which prevailed during the minority of the Nazir and of his predecessors in office kept by the Nazir with other petitioners for sale and notices relating to them in a bundle.

person who chose to ask for it or wished to see it being at liberty to inspect the whole bundle,—*Held* by *PERNEKAY, O'J*, and *GHOVE, J* (Tor-

Publication of the notice within the meaning of
section 2 of the Registration Act and that it was
a statement in plain, for the defining purpose
with the meaning of a 14 to have the said
made, Muzaraya of Burdwan & Taryandara
No. 12 B, 9-Cate, 618 Z B, 10 Z A, 16,
dated on

Cham
Mondvi
Mondvi
Mondvi

I L. R., 19 Cal., 708

174 —
Non-attachment and non publication of sale pro
cedure—Civil Procedure Code (Act XIV of
1859)

DAY
I.L.B., 17 Calg, 474

Held by the Privy Council affirming the decision—The power of sale given to the zamindar by

that, as a defect fatal to the whole proceedings, for the first time in the Appellate Court. *Held* for the sake of the rule. This objection was taken against the whole was wrong would be the only ground of reversal of 3 or 4, and intimated that was not to be considered a defect, as it followed the notice relating to a trial year sale due to the defendant as a condition precedent to the payment of three fourths of the balance of the property, intimating that to the contrary, the sale was not a condition of 3 or 4, but the provisions of 3 or 4, subject to a condition as to notice to the defendant. To the effect that the defendant was not to be paid until the year sale was made, and that the defendant was to be paid the balance of the property.

Д-р а. НАНДЖАНДЖАНОВ
[1] Л. Р., 20 сале, 86
Л. Р., 19 т. А, 191

711
Reg. No. _____
 711
 Reasonable time—Constitution of the section—
 Sitting and sale, Ground of—The provision in s 8
 of Regulation VIII of 1817 requiring the notice of
 sale to be published before the 15th Bysak applies to
 the notice to be published in the muntass and not
 to the notice to be posted at the Chak.

of the words to be struck at the University. The words in the section "as same shall then be struck up in some conspicuous part of the cathedral" do not mean that it must be struck up either immediately or before the service of the other notices referred in the section or at least before the 15th of August. It

the sale NIKHAT ULTAH & SONS
[2 C. W. N., 461

PUBLICATION OF NOTICE BEFORE SALE OF PATENT RIGHTS
Act of Congress, approved March 3, 1879.

SALE FOR ARREARS OF RENT

—continued.

11. SETTING ASIDE SALE—continued.

about to be called up. The third K, without information to the Collector or zamindar's agent of their intention to pay, or giving notice to the others, purchased the putni. Held that K's act was one of bad faith, and that the 4 annas shareholders whom he represented could not in equity be allowed to benefit by adopting the fraud. Held also that, as between the Collector and zamindar and the defaulting putnidars, the sale was valid; but that it was void so far as it created a title in favour of the 4 annas share holders to the 12 annas share, and K must be treated as having made the purchase on account of, and as a trustee for, the 12 annas shareholder. Koyash Chunder Barmjer v. Kalye Phosurno Chowdhury 16 W. R., 80.

181. **Collusion—In-Valid sale—Disconnection of share sold.**—Where the sale of a tenure for arrears of rent was brought about by collusion between the party in whose name it stood and the purchaser, with a view to get rid of a co-sharer, who had neglected to have his share transferred to his name, Held that the transaction was a private one, and not really an auction sale for the purpose of realizing the zamindar's rent, and that on payment of his share of the rent the above sharer was entitled to have his share reconveyed to him. Kishore Chunder Sen v. Kalye Kinkar Paul Chowdhury 20 W. R., 333.

See SHIMO SOODHARE DOSSER v. PAKHOSOMARE CHUNDERA 14 W. R., 158.

SIDDER NABUR ALTY KHAN v. OGOODHARABAI KHAN 10 Moore's I. A., 540.

182. **Collusion—Beng. Reg. VII of 1819—Sale where no arrears are due.**—Per AIRSTAR, J.—It can only be on the ground that a sale is carried out in respect of arrears not really due that fraud and collusion can be imputed. RAY CHURN BUNDOOPADHYA v. DHORO MOHAR DOSSER 17 W. R., 122.

183. **Beng. Reg. VII of 1819—Invalidity of sale—Sale where no arrears are due.**—A putni sale under Regulation VIII of 1819 is invalid if there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not at the time of the sale. SHROOR CHUNDER BHOOKER v. PERRAR CHUNDER SINGH 17 W. R., 219.

184. **Sale after arrears have been paid—Suit to set aside sale—Deposit of rent in Collector's treasury.**—An estate was sold under cl. 2, s. 8, Regulation VIII of 1819, for arrears of rent due by a putnidar to the zamindar. Prior to the date of sale, the amount due was paid by the putnidar to an accountant in the Collector's Office, as in satisfaction of arrears, but no notice was given to the zamindar or Collector. A suit was afterwards brought to set aside the sale, on the ground that, in consequence of such payment, there were no arrears due at the time of sale. Held per NORMAN and MACPHERSON,

11. SETTING ASIDE SALE—continued.

176. **Unregistered proprietor's right to sue to set aside sale—Putni taluk—Transfer of putni—Registered transfer—Beng. Reg. VII of 1819, s. 14.**—Where a putni taluk has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of s. 14 of the same Regulation. CHUNDER PERSHAD ROY v. SHYAMBA KUMARI SHYAMBA 11 L. R., 12 Cal., 622.

177. **Beng. Reg. VII of 1819, ss. 3, 5, 6, 14—Sale of putni tenure—Registered putnidars—Suit by unregistered putnidars.**—An unregistered proprietor of a putni tenure is entitled to sue to set aside a sale held under Regulation VIII of 1819. CHANDER PERSHAD ROY v. SHYAMBA KUMARI SHYAMBA 11 L. R., 12 Cal., 622.

178. **—Beng. Act VII of 1865—Right of purchaser.**—A purchaser at a sale in execution of a decree held under Bengal Act VII of 1865 could not be ousted from the property purchased by him without proof that the decree and sale were fraudulent, and that he (the purchaser) was a party to or had notice of the fraud. DABBAR ROY v. NIMANUND CHOKKIBARTTY 17 B. L. R., 4 P., 1; 15 W. R., 365.

179. **Collusion—Suit by tenant against purchaser to set aside sale.**—Where a tenure had been sold under s. 105, Act X of 1859, in execution of a decree for the rent of land held under a mirasi pottah, a tenant in possession was at liberty to show that the decree had been obtained by fraud and collusion against a person who had then no interest in the premises. BORDADAT v. GEORGE 2 W. R., Act X, 63.

180. **Beng. Reg. VII of 1819—Invalid sale.**—A putni taluk being about to be brought to sale under Regulation VIII of 1819, the agent of the sharers were in attendance at the Collectorate on the day of sale, prepared to pay the rent due. Two of the agents (T and B) happened to be out of the way at the time, the lot was

SALE FOR ARREARS OF RENT

—continued.

11. SETTING ASIDE SALE—continued.

of rent in 1889, and within the time prescribed by the Madras Rent Recovery Act, s. 18, put in an application for sale to the Collector and otherwise complied with the procedure prescribed by the Act. The land was sold, but the sale was set aside as having been irregularly conducted. The landlord then made in 1891 an application to the Collector for a fresh sale (which was granted); a fresh sale took place without a fresh notice being given to the tenant under s. 39 of the intention to sell. The tenant now sued to have this sale set aside. Held that a fresh notice was not necessary, and that the plaintiff was not entitled to have the sale set aside. OLIVER v. ANANTHARAMAIA 11 L. R., 20 Mad., 498.

176. **Unregistered proprietor's right to sue to set aside sale—Putni taluk—Transfer of putni—Registered transfer—Beng. Reg. VII of 1819, s. 14.**—Where a putni taluk has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of s. 14 of the same Regulation. CHUNDER PERSHAD ROY v. SHYAMBA KUMARI SHYAMBA 11 L. R., 12 Cal., 622.

177. **Beng. Reg. VII of 1819, ss. 3, 5, 6, 14—Sale of putni tenure—Registered putnidars—Suit by unregistered putnidars.**—An unregistered proprietor of a putni tenure is entitled to sue to set aside a sale held under Regulation VIII of 1819. CHANDER PERSHAD ROY v. SHYAMBA KUMARI SHYAMBA 11 L. R., 12 Cal., 622.

178. **—Beng. Act VII of 1865—Right of purchaser.**—A purchaser at a sale in execution of a decree held under Bengal Act VII of 1865 could not be ousted from the property purchased by him without proof that the decree and sale were fraudulent, and that he (the purchaser) was a party to or had notice of the fraud. DABBAR ROY v. NIMANUND CHOKKIBARTTY 17 B. L. R., 4 P., 1; 15 W. R., 365.

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11. SETTING ASIDE SALE—continued.

11. SETTING ASIDE SALE—continued.

11. SETTING ASIDE SALE—continued.

validity of sale.—Where a tenure was duly sold for arrears of rent under Act X of 1859 and Bengal Act VIII of 1866, the absence of a shareholder's name from the proceedings did not, as a matter of law, invalidate the sale as against him. *DOORBAJOY MAHTOON v. PRITHVI NARAIN SINGH* [14 W. R., 30]

Fixing date of sale.—*Bras*—Custom—Uniformity of practice.—As regards the date fixed for sale and the era to be followed, the uniform practice in each locality. Uniformity being the essential requirement, and the particular date only the form of enforcing regularity, a practice which has been established for a course of years and which is reasonable and convenient in itself is not liable to objection on a mere point of form. *PRITHVI NARAIN PANDA v. DAMODAR DOSS, DASSAR v. BRAS PANDA* [24 W. R., 129]

189. *Bras*—*Byway in advertisement of date.*—According to Regulation VIII of 1819, the sale of a patti tenure for arrears of rent must take place on a day in the Bengal month of Jyest. When a sale was advertised to take place on the 5th Jyest 1269, which date was erroneously stated in the sale notice to correspond with Saturday, May 17th, 1862, whereas the 5th Jyest was, in fact, Saturday, the 4th Jyest, the sale was held to be illegal, in consequence of its not having taken place on the 5th Jyest, or any subsequent date to which it might have been adjourned after due notice. *BECHARAM MOOKERJEE v. ISSUR CHANDER MOOKERJEE* [W. R., 1864, 4]

200. *Change of date of sale.*—*Sale*—*Suit to set aside not for full arrears.*—*Bras*—*Sale.*—In a suit to set aside a sale for arrears of rent due up to August 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds. The change of date of sale from a holiday to the next advertised public sale day was not in this case such a postponement of the sale as to require any new distinct notification. A sale is not invalid because it is not for the full complete arrears due at the end of the year; it may take place at the end of the year for such arrears as may then be existing. No fraud or collusion was proved to justify the sale being set aside. *FORBES v. PRITAP SINGH DOORBA* [7 W. R., 409]

201. *Postponement of sale.*—*Discretion of Court.*—A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the postponement is shown to promise benefit to the judgment-debtor, i.e., that it will put him in a position to satisfy the demand, or when an immediate sale would be likely to entail injury to him, while a postponement would cause no serious prejudice to the decree-holder. *JANAKERAM JLOOKERJEE v. RADHA MONI CHATTERJEE*. [20 W. R., 130]

193. *Want of notice of sale.*—*Bond fide purchaser.*—If a patti is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the bond fides of the purchaser. *MOHABTOO AIR v. AMBER AIR*. [21 W. R., 252]

194. *Unregistered tenant.*—*Purchaser.*—*Suit to set aside sale.*—The purchaser of a tenure which is liable to be sold under Regulation VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. *DHURUP SINGH ROY v. VILHAR AIR* [13 B. L. R., 153 note; 15 W. R., 211]

195. *Beng. Reg. VII of 1819, s. 14.*—*Patti sale.*—*Se-patti interest.*—*Cons of proof as to requirements of Reg. VII of 1819.*—*Regulation VII of 1819, and purchased by the zamindar under Bengal* Certain pattiholders having defaulted, their patti right was put up for sale by the zamindar under Bengal Regulation VII of 1819, and purchased by the defendants. The plaintiffs, being se-pattidars of a portion of the lands let out in patti, were, after the sale, dispossessed by the defendants. The se-pattidars brought a suit against the defendants asking for possession of the mouzah forming their se-patti, alleging that the notification of sale had not been duly served, and that the proceedings taken by the zamindar were bad as they were taken in the name of the last deceased holder of the patti. The zamindar was made a party to the suit, but no relief was asked against him. *Held* that, notwithstanding that the plaintiff questioned the validity of the sale, the suit was not one under s. 14 of the Regulation, and no relief being claimed against the zamindar, and that the plaintiff's only remedy was a suit under s. 14 of the Regulation to set aside the sale of the entire patti. *SURESH CHANDRA MUKHOPADHYA v. AKHORI SINGH*. [I. L. R., 20 Cal., 746]

196. *Vagueness of specification and notice of sale.*—*Act X of 1859, s. 104.*—*Want of clearness in the specification of the arrears and costs for which a sale takes place, or in the mode in which the notice is published, is not an irregularity vitiating a sale for arrears of rent if fraud is absent.* *MAHOMED AYERMOODJEE v. KATKE DOSS CHUNDU* [15 W. R., 279]

197. *Absence of one shareholder's name from proceedings.*—*Irregularity affecting*

SALE FOR ARREARS OF RENT

—continued

12 SETTING ASIDE SALE—continued

Mad Act VIII

1865 (Rent Recovery Act) s 33—Adjournment for next day—Duty of officer conducting sale—A sale of land for arrears of rent under the provisions of the Rent Recovery Act

208 Held that the sale was invalid

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257 Held that the sale was invalid

12 SETTING ASIDE SALE—continued

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12 SETTING ASIDE SALE—continued

SALE FOR ARREARS OF RENT

—continued.

11. SETTING ASIDE SALE—continued.

validity of sale.—Where a tenure was duly sold for arrears of rent under Act X of 1859 and Bengal Act VIII of 1865, the absence of a shareholder's name from the proceedings did not, as a matter of law, invalidate the sale as against him. DOORBAJOY MAHTOON v. PRITHVI NARAIN SINGH.

[14 W. R., 30]

198. Fixing date of sale—*Law*—

Custom—Uniformity of practice.—As regards the date fixed for sale and the era to be followed, the intention of the Regulation was to lay down a uniform practice in each locality. Uniformity being the essential requirement, and the particular date only the form of enforcing regularity, a practice which has been established for a course of years and which is reasonable and convenient in itself is not liable to objection on a mere point of form. PITAMBUR PANDA v. DAMOODUR DOSS. DASSER v. PITAMBUR PANDA.

[24 W. R., 129]

199. *Law*—*How* in

advertisment of date.—According to Regulation VIII of 1819, the sale of a patti tenure for arrears of rent must take place on a day in the Bengali month of Jyest. When a sale was advertised to take place on the 5th Jyest 1269, which date was erroneously stated in the sale notice to correspond with Saturday, May 17th, 1862, whereas the 5th Jyest was, in fact, Sunday, May 18th, and the sale took place on Saturday, the 4th Jyest, the sale was held to be illegal, in consequence of its not having taken place on the 5th Jyest, or any subsequent date to which it might have been adjourned after due notice. BECHARAM MOOKERJEE v. ISSUR CHANDER MOOKERJEE.

W. R., 1864, 4

200. Change of date of sale—*Suit to set aside*

not for full arrears—*How*—*Suit to set aside*—In a suit to set aside a sale for arrears of rent due up to August 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds. The change of date of sale from a holiday to the next advertised public sale day was not in this case such a postponement of the sale as to require any new distinct notification. A sale is not invalid because it is not for the full complete arrears due at the end of the year; it may take place at the end of the year for such arrears as may then be existing. No fraud or collusion was proved to justify the sale being set aside. FORBES v. PRATAP SINGH DOORBA.

[7 W. R., 409]

201. Postponement of sale—*Dis-*

cretion of Court.—A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the postponement is shown to promise benefit to the judgment-debtor, i.e., that it will put him in a position to satisfy the demand, or when an immediate sale would be likely to entail injury to him, while a postponement would cause no serious prejudice to the decree-holder. JANAKERAM MOOKERJEE v. KADHA MONIV CHATTERJEE.

. 20 W. R., 130

SALE FOR ARREARS OF RENT

—continued.

11. SETTING ASIDE SALE—continued.

to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. DOORBA PERSHAD PAT CHOWDHRY v. JOGESH PROKASH GONGOPADHYA.

. 4 W. R., Act X, 38

193. Want of notice of sale—

Bond *vide purchaser.*—If a patti is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the bond *vide* of the purchaser. MOBAROK ALI v. AMBER ALI.

21 W. R., 252

194. *Unregistered*

tenant—*Purchaser—Suit to set aside*—The purchaser of a tenure which is liable to be sold under Regulation VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. DHURUP SINGH ROY v. VILLAYER ALI.

[13 B. L. R., 153 note: 15 W. R., 211]

Also BHOBO TARINER DOSSER v. PROSONNOMOY DOSSER

. 13 B. L. R., 150 note

GOSAIN MUNGU DOSS v. ROY DHURUP SINGH

[25 W. R., 152]

195. Beng. Reg. VII

of 1819, s. 14—*Patti sale—Se-patti interest—Onus*

of proof as to requirements of Reg. VII of 1819.—Certain pattidars having defaulted, their patti right was put up for sale by the zamindar under Bengal Regulation VIII of 1819, and purchased by the defendants. The plaintiffs, being se-pattidars of a portion of the lands let out in patti, were, after the sale, dispossessed by the defendants. The se-pattidars brought a suit against the defendants asking for possession of the mouzas forming their se-patti, alleging that the notification of sale had not been duly served, and that the proceedings taken by the zamindar were bad, as they were taken in the name of the last deceased holder of the patti. The zamindar was made a party to the suit, but no relief was asked against him. *Held* that, notwithstanding that the plaintiff questioned the validity of the sale, the suit was not under s. 14 of the Regulation, and that the plaintiffs' only remedy was a suit under s. 14 of the Regulation to set aside the sale of the entire patti. SUBRASH CHANDRA MUKHOPADHYA v. AKKORI SINGH.

. 1 L. R., 20 Cal., 748

196. Vagueness of specification

and notice of sale—*Act X of 1859, s. 104.*—Want

of clearness in the specification of the arrears and costs for which a sale takes place, or in the mode in which the notice is published, is not an irregularity vitiating a sale for arrears of rent if fraud is absent. MAHOMED AHMEDOODUR v. KATER DOSS CHANDO

[15 W. R., 279]

197. Absence of one shareholder's

name from proceedings—*Irregularity affecting*

SALE FOR ARREARS OF REVENUE

—continued.

1. RIGHT TO SELL.

1. — Right of Government.—

que, whoever is the detainer. BALKRISHNA
VASUDEV v. MADHAVRAJ NARAYAN

[I. L. R., 5 Bom., 73]

2. Arrears—Beng. Regs. XIV of 1793 and VII of 1799—Beng. Reg. V of 1812.—By Regulations XIV of 1793 and VII of 1799 the Governor General in Council may order a sale for arrears of a monthly instalment of revenue before the close of the

be an arrest of a previous year or of a month in-

ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԱՆՏՀԱՆՈՒԹՅԱՆ ԿԱԶՄԻ

installments, provided the monthly installments be

NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT PERMISSION IN WRITING FROM THE NATIONAL ARCHIVES AT COLLEGE PARK, MARYLAND.

unpaid on the first day of the following month,

and the Board of Revenue may direct the whole

the monthly by instalments are fixed and determined,

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by which the estates of the surtees also were ren-

Box 2, Government

2. PROTECTED TENURES.

of purchaser to avoid incumbencies—Right of

The title of a purchaser at a sale for

whether the tenure is protected under any of the

clauses of s. 37 of Act XI of 1859, and whether the

37. SHEO PURSHUN SINGH v. RAJENDRO

KISHORE SINGH . . . 12 W. R., 123

The rights which are conferred upon a purchaser at

... 37, are capable of being transferred to another

STATE OF WISCONSIN: JUDICIAL CIRCUIT IN AND FOR THE COUNTY OF KOSCIUSKO.

THE SECRET OF THE THUNDERBOLT

granted by a Hindu widow, though in appearance a

tion of s. 27, Act XI of 1859. Was in reality a fraud

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SALE FOR ARREARS OF REVENUE

INCUMBRANCES—continued

I of 1845, which refers only to tenants and tenants Collector or 24 Panchayats & Joxhain Hoar [W. H. R., 17:1 Ind Jur, O. S., 101

(c) Bepday Regulation XI of 1822

2,

as of art

as landlord raised the rents throughout the property Held that the revenue sale cancelled all former arrangements entered into indistinctly by the former proprietors and that the freely settlement made by Government with the present proprietors would not happen to be the basis of the former proprietors they happen to be the basis of the former proprietors [W. H. R., 196

28. Right to cancel talukdars' tenure—Settlement—Right to grant—The Govern-

ment purchased the zamindars' rights in perpetuity, under Regulation XI of 1822 at a sale for arrears of Government revenue, and re-settled one of the talukdas

had expired, the Government sold their zamindars' rights to the defendant, who ejected the plaintiffs In a suit to recover possession—Held that it was the intention of Government to retain talukdars in pos-

this case the proceedings which were taken by the Government showed that they did not cancel the

to enhancement Under the sale law as it existed before 1822, a talukdar could not be disposed of as the full perpetuity rate, and could only be ejected after refusal to pay the enhanced rate but under Regulation VI of 1822 dependent talukdas created subsequent to the decennial settlement were liable to be wholly avoided and annulled at the option of the

or might not exercise), he must take some clear step to declare the avoidance or cancellation of the tenure

ASSAMOOTAN & OTHER CHURN ROY [W. H. R., P. C., 24-13 Moore's L.A., 317

Right of cancellation by Government as action purchaser—Here case of power of cancellation—Where the Privy

SALE FOR ARREARS OF REVENUE

INCUMBRANCES—continued

the equity of redemption is an exception to the rule that a sale for arrears of revenue gives a title against all the world Srima Nuzur Ali Khan & Oodunyan Khan [10 Moore's L.A., 540 & W. H. R., P. C., 83

22 Right to avoid incum-

ences—Right of purchaser—Quare—Whether the auction purchaser under Act I of 1845, at a sale for arrears of revenue, was entitled to take free of all incumbrances created by the defaulting proprietor [W. H. R., 237

Right of auction-purchaser—Act I of 1845, s. 26—An auction-purchaser of a zamindari at a sale for arrears of revenue is not entitled, under s. 26, Act I of 1845, to eject a holder of a talukdari tenure though held under an invalid title Dooaga Purnan Choudhary & Rajendur Narain Roy 2 May, 181

24 Agreement by former owner as to division of share—Act I of 1845,

s. 26, Act I of 1845, it is to be observed that the purchaser is to divide the share equally, such an agreement is an alienation of, or incumbrance on the purchased estate and therefore, under s. 26 of Act I of 1845, void as against the purchaser (dissentient case But per Noor, J., and Campbell, J. it would seem that purchasers under any of the sale laws since Act XII of 1841 may be bound by a decree in a boundary suit against the prior owner HOVENKAT CHATTERJEE & AMERNOONISSA KHANOOK W. R., 191

25 Act I of 1845, s. 26—Mukami tenant in Benares Right of—S. 26 of Act I of 1845, which enables auction purchasers at sales for arrears of revenue to eject tenants in the province of Benares, was by s. 1 of Act X of 1859 made subject to the modifications contained in the latter Act Therefore, notwithstanding a sale by auction for arrears of revenue, a mukami tenant in the province of Benares is entitled to receive a plot at the fixed rent therefor paid by him ALUKO & BAIKOO BHOW

26 Act I of 1845, s. 26, cl. 3—Purchaser's right to erect—Khodkat

27 Act I of 1845, s. 26—Kumbhakar's right to erect—Kumbhakar

28 Act I of 1845, s. 26—Kumbhakar's right to erect—Kumbhakar

29 Act I of 1845, s. 26—Kumbhakar's right to erect—Kumbhakar

30 Act I of 1845, s. 26—Kumbhakar's right to erect—Kumbhakar

31 Act I of 1845, s. 26—Kumbhakar's right to erect—Kumbhakar

—continued.

4. INCUMBRANCES—continued.

Council, in the case of *Arunodda v. Ohoy Churn Roy, 13 Moore's L. J., 317*, recognizing that the Government had, as the auction-purchaser at a sale for arrears of revenue, the option of cancelling and annulling the individual tenure in that case, ruled that it was incumbent on Government to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure, and finding that the Government had not exercised that power, declared the under-tenant entitled to retain possession of his land during the subsistence of his tenure. *Held* that the decision did not apply to a case in which the proceedings of Government showed that it had exercised the power of cancellation. *Held* also that the indulgence in that case referred mainly to tenures purchased between 1817 and 1822, but not to tenures created after Regulation XI of 1822 had informed persons that their rights were liable to be cancelled by a purchaser at an auction-sale for arrears of revenue. *APRABODDHA MANOHAR v. SAKHOTTAH, SAKHIA-OTTAH v. APRABODDHA MANOHAR*

[23 W. R., 245]

31. — Right of Government to annul tenures—Evidence of cancellation—Presumption.—Though on the sale of a zamindari for arrears of revenue the Government has the right to annul all under-tenures not specially protected, yet it cannot be taken for granted that the Government has enforced its extreme rights and even where the right of Government to do so is asserted in the course of the proceedings, it is a matter which has been decided upon evidence, whether, having ascertained its right, the Government actually enforced it. *THEODORE CHODKERNUTTY v. KOMOLA KANT CHODKERNUTTY, KOMOLA KANT CHODKERNUTTY v. NERAO SINGHO SINGH*

[25 W. R., 536]

32. — Settlement—Right to effect incumbrances.—Where at an auction-sale for arrears of revenue the Government becomes the purchaser of the property, and afterwards makes a settlement with the former proprietors of the under-tenures, the question whether or not the Government cancelled the under-tenures existing at the time of the sale is one to be decided solely according to the effect of the proceedings taken by the Collector in each case. It is a mistake to suppose that the Lordships of the Privy Council in the case of *Arunodda v. Ohoy Churn Roy, 13 Moore's L. J., 317; 13 W. R., p. 53, 24* in- tended to lay down a general rule according to which all questions of this nature are necessarily to be decided. *SHOOK DIB SHAH v. ALADY*

[2 C. L. R., 18]

See *GOOROO PERSHAD CHODKERNUTTY v. BANI NATH CHODKERNUTTY*

[2 C. L. R., 216]

33. — Right of purchasers—Tender of Government revenue by defaulter's mortgagees—Liability of Collector—The purchaser at a revenue sale, held in default of the payment of assessments, takes free of all incumbrances, although the revenue authorities, without otherwise depriving the defaulter

—continued.

4. INCUMBRANCES—continued.

of his right of occupancy, under s. 36 of the Bombay Survey Act, I of 1863, have only sold his right, title, and interest. *Adul Gunt v. Krishnaji Bhikaji, 10 Bom., 416*, and *Gundo Shiddechar v. Madan Sahab, 10 Bom., 419*, followed. The Collector may be responsible to the mortgagee of a revenue defaulter for refusing to accept the tender made by him of the Government rent, but if he does refuse it, and the land is sold, the title of the purchaser is unimpeachable. *GHANABAI BUKARIDAS v. PHAKTI-RAJ TEJANARAY*

[11 Bom., 218]

34. — Right of ejectment—Beng. Reg. XI of 1822—Under-tenures—Right to impeach sale.—The right to impeach a sale of lands for arrears of Government revenue extends not only to the defaulting proprietor, but to derivative holders under him. By Bengal Regulation XI of 1822, s. 30, all under-tenures are extinguished by a Government sale of the proprietor's lands for arrears of revenue, and an auction-purchaser takes the lands clear of all under-tenures. At a sale by Government for arrears of revenue, the Government became purchasers, and afterwards granted a lease of the lands for a term of years, and put their leases into possession. At the time of the sale the lands were subject to an istamari lease. No suit was brought to reverse the sale, but the Government some time afterwards, in consequence of doubts as to the legality of the sale, offered to give up their rights under the sale, and to restore the lands to the original proprietors, subject to the recognition of the claims of their lessees. This offer resulted in an arrangement between the Government, the original proprietors, and the Government lessees, and eventually the original proprietors upheld the lease to the Government lessees as a part of the lands called the Jungle Akhal for a term of years at a reduced rent. In a suit by the istamari lessee for possession, *Maid* (reversing the decree of the Sudder Court) that by Bengal Regulation XI of 1822, s. 30, the istamari lease was determined by the sale for Government arrears, and that the arrangement by which the lands were restored to the proprietors, subject to the rights of the Government lessees, was in the nature of a compromise, and not such an unconditional restoration as amounted to a reversal of the sale, and the consequent revival of the istamari lease. *Aliter*.—If a suit had been brought and a decree made for reversal of the sale, *WATSON v. SURENDRA LAL KHAN*

[5 Moore's L. J., 447]

(d) Act XI of 1859.

35. — Lakhirajdars—Beng. Reg. VII of 1822, s. 10, cls. 7 and 8—Arrangement by Commissioner for payment of revenue. Payment by all through principal proprietor.—In a suit for ejectment and khas possession by an auction-purchaser under Act XI of 1859 the defendants' case was that after resumption of their lakshmi tenures a settlement had been made under Regulation VII of 1822 with the principal proprietor, and by that settlement it was arranged that the Government revenue payable

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INCUMBRANCES—continued

By all the proprietors, the defendants among them,

was to be paid through the principal proprietor, and

that the defendants were to hold perpetual possession

as to the defendants and that their rights should be reserved

in fact that the possession of the defendants

as to the defendants could not be disturbed as long as

they paid the revenue assessed upon them in the

settlement *Held also* (Nankar of 1822 applied)

that of 8 & 10, Regulation VII of 1822 applied

only to cases referred to in cl 7—that is of cul-

ivating proprietors or pattidar or bhayam tenure

or the like, and not to a case of this kind *Rax*

Gorin 1 or a Kusarpooza

14 W. R., 1

Affirmed on review where it was held that a Com-

missioner's maintenance cannot destroy legal rights

even if no protest or objection be made *The order*

of a Commissioner requiring proprietors to bring in

particulars to pay for the convenience of the

Collector, the shares of revenue therein or of their

proportion allowed under the settlement is valid

preserved by express record or transform such right

36. Right to annual income—

15 W. R., 141

Principles—An auction purchase of a revenue

estate—An auction purchase of a revenue

estate—An auction purchase of a revenue

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estate—An auction purchase of a revenue

—continued.

INCUMBRANCES—continued

passes to the purchaser, who alone can institute such a

suit. In such a case the plaintiff's competency to

sue is not affected by the fact of his being a tenant of

only a portion of the estate, provided that portion

contains the tenure which is sought to be resumed.

A plaintiff, under such circumstances though he

may recover rent, is not entitled to eject an under-

tenant who has been allowed to dig a tank and

return in possession undisturbed by the former pro-

prio for a long period (say upwards of thirty years),

and who must therefore be assumed to have held with

the acquiescence of the former proprietor, such a

question being equivalent to a lease *Srinivas*

Rax Dex v Kooroo Chann

15 W. R., 481

Land subject to

Andut Gani v Krishnamurti Baijani

10 Bom., 416

40 Right acquired by pur-

chaser—Act XI of 1859, ss 11, 13, 54 Sale

of land obtained in 1741 from his zamindar 441

rights of land which remained therefrom

created rent-free. The zamindar fell into arrears,

and the zamindar was sold Subsequently three

persons who had become owners of the zamindar,

applied to the Collector under s 11 Act XI of 1859,

and the Collector ordered separate accounts with

each of them for the revenue of their respective

shares. The revenue due from one of them fell

into arrears, and his share, which included the 441

the plaintiff who now sent the descendant of A

to recover possession. *Held* that the sale of a share of

a zamindar under s 13 Act XI of 1859 does not

convey to the purchaser the share free from all in-

communities created by the former zamindar, but he

acquires the share, as if down in s 54, subject

to all incumbrances *Kasimati Koorwan v*

Bankbhawan Chowdhury

13 B. L. R., A. C., 448

S C Kasmirvatan Koorwan v Durgu Bhanar

Chowdhury

12 W. R., 440

Act XI of 1859, s 33—Right of purchaser to eject holders of houses

and with houses tenures—Where certain houses and

tenures were never set aside by the

Revenue Settlement or Revenue Commissioner's

orders from the time they were recorded as existing

rights hereditary tenures of those classes at the

first settlement—*Held* that the purchaser of the

estate which could not eject the holders of those

tenures under s 32, Act XI of 1859, so long as they

paid their jumma according to the settlement jumma—

Bhoda Kanti Laha v Goutam Chandra

12 & 2

—continued

INCUMBRANCES—continued

By all the proprietors, the defendants among them,

was to be paid through the principal proprietor, and

that the defendants were to hold perpetual possession

as to the defendants and that their rights should be reserved

in fact that the possession of the defendants

as to the defendants could not be disturbed as long as

they paid the revenue assessed upon them in the

settlement *Held also* (Nankar of 1822 applied)

that of 8 & 10, Regulation VII of 1822 applied

only to cases referred to in cl 7—that is of cul-

ivating proprietors or pattidar or bhayam tenure

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SALE FOR ARREARS OF REVENUE

—continued

4 INCUMBRANCES—continued

in 1886 He applied under Ch X of the Bengal Tenancy Act for the measurement of the estate and

for it it was entered on the record of rights as māl land held under those sanads as lakhiraj. The Special Judge on appeal by the plaintiff held that the land having been found to be māl should have been entered as māl land assessed with rent. In a suit to have the land assessed with rent it was found that the sanads under which the defendant claimed to hold were granted not by any predecessor in title of the plaintiff and were of a date anterior to the Permanent Settlement. Held that the adverse possession set up by the defendant was within the meaning of s 53 of Act XI of 1859 an incumbrance subject to which the plaintiff, as a proprietor whose estate had been sold took it on repurchase. If such adverse possession therefore were sufficiently long, the suit would be barred by limitation. The plaintiff could not be regarded as a person who had acquired the estate free from all incumbrances which may have been imposed upon it after settlement as provided by s 37 of Act XI of 1859.

revenue. The case was remanded for findings whether the land was māl or lakhiraj and whether the defendant's adverse possession was long enough to bar the suit. **KABIR KHAN v BROJO NATH DAS**

[I L R, 22 Calc, 244]

47 ———— *Right of auction purchasers to annul incumbrances—Act XI of 1859, s 37—Suit to cancel under tenures—Parties—The*

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under tenure, is a right that must be exercised by all the purchasers jointly where there are more purchasers than one. **JATRA MOHAN SEN v AKHIL CHANDRA CHOWDERY** I L R, 24 Calc, 334

AKHIL CHANDRA CHOWDERY v JATRA MOHAN SEN 1 C W N, 314

48 ———— *Purchaser at a revenue sale—Act XI of 1859, s 37—"Entire estates"—Partition by Collector Effect of—Estates Partition Act (Beng Act VIII of 1876) s 123—Time of settlement—A new estate created upon a partition by the Collector comes within the meaning of "entire estate" in s 37 of Act XI of 1859. The words "time of settlement" in that section mean the time when the contract was made with Government, and in the case of a permanently settled estate mean the time of permanent settlement. A partition by the Collector merely apportions the amount of revenue, there is no settlement of the*

SALE FOR ARREARS OF REVENUE

—continued

4 INCUMBRANCES—continued

revenue in any sense at the time of such partition. **KOOBAR SINGH v GOUR SUNDAR PRASAD SINGH** [I L R, 24 Calc, 387]

49 ———— *Act XI of 1859 s 37—"Eject," Meaning of—"Entire estate"—Meaning of Notice—When an estate sold for arrears of revenue is recorded in a separate number in the Collector's rent-roll with a separate revenue assessed upon it, and the specification in the sale certificate granted under s 28 of Act XI of 1859 in the form prescribed by the Act shows that the estate sold was an entire estate, the mere fact of a portion of the lands of that estate being joint with those of certain other estates cannot stand in the way of its being an*

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made in favour of a co owner of property. **Hulodhur Sen v Gouroo Das Roy, 20 W R 126 Radha Prosad Wasti v Esuf, I L R, 7 Calc, 414** approved of. Held further that the law does not require any notice as a necessary preliminary to a suit to avoid an under tenure although the tenure is not ipso facto avoided by a sale of the estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale but such option may be exercised by the institution of a suit within the time allowed by law. **Titu Bibee v Mohesh Chandra Bageh, I L R 9 Calc 633** referred to. **KAMAL KUMARI CHOWDHURANI v KIRAN CHANDRA ROY** ■ C W N, 229

50 ———— *Unrecorded co partner Purchase by—Incumbrances—Act XI of 1859, ss 37, 43—A in November 1863 purchased a portion of an estate sold in execution of a decree against the then proprietor. This sale was not confirmed till the 9th February 1863. Default occurred in the payment of the Government revenue in January 1863 and the entire estate was put up for sale by the Collector and purchased by A on the 29th March 1863. Held that A, at the time of his second purchase was an unrecorded co partner of an estate within the meaning of s 53 of Act XI of 1859 and therefore took the entire estate subject to all the incumbrances existing at the time of the Government sale for arrears of revenue. **ABDOOL BARI v RAMDASS COONDROO***

[I L R, 4 Calc, 307]

51. ———— *Re purchase by co proprietor—Rights of under-tenants—Incumbrances—Act XI of 1859 s 43—Under s 53 of Act XI of 1859 a co-proprietor who purchases an estate at a sale for arrears of Government revenue takes it subject to the incumbrances created by the*

SALE FOR ARREARS OF REVENUE

—continued.

4. INCUMBRANCES—continued.

defaulting proprietor. *MAHOMED GAZI CHOWDHRY v. LEICESTER* 7 B. L. R., Ap., 52

S. C. MAHOMED GAZEE CHOWDHRY v. PEAREE MOHUN MOOKERJEE 16 W. R., 136

And this is so whether he purchases benami or from the benamidar after his purchase. See same case, and case of *ALUM MANJEE v. ASHAD ALI*

[16 W. R., 138]

52. ——— Act XI of 1859, s. 54—*Bonâ fide incumbrances*.—The object of s. 54, Act XI of 1859, is to protect, not every incumbrance which may be set up, but only *bonâ fide* incumbrances executed in contemplation of an impending sale or in fraud of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the incumbrance to establish its *bonâ fide* character. *MONOHUR MOOKERJEE v. JOYKISHEN MOOKERJEE* 5 W. R., 1

53. ——— *Lease of a share*.—A lease of a share is protected under s. 54, Act XI of 1859. *KALEE PUDDO GHOSE v. MONOHUR MOOKERJEE* 7 W. R., 295

54. ——— and s. 13—*Liability to incumbrances—Mokurari lease—Inquiry as to title of alleged owners of share sold—Benami transfers—Limitation Act (XV of 1877) sch. II, art. 144*.—After the sale of a share in an estate under the provisions of Act XI of 1859, a suit was brought to establish a mokurari lease, as an incumbrance under s. 54, upon the share in the hands of the purchaser. This share having been held by several successive benami holders, the main question was whether those who had granted the mokurari were entitled to all or to any, and what part, of the land comprised in their grant; and as to this point the most important fact was the actual possession or receipt of the rents; this being also material in regard to limitation under Act XV of 1877, sch. II, art. 144, the twelve years' bar commencing from the date of possession first held adversely. *IMAM BANDI BEGUM v. KAMLESWARI PERSHAD*

[I. L. R., 14 Calc., 109
L. R., 13 I. A., 160]

55. ——— and ss. 10, 11, 28, 53, and Sch. A—*Rights of purchaser of share of estate admitted to special registration under ss. 10, 11 of Act—Rights of mortgagee of share against purchaser*.—There is a clear distinction between the rights acquired under ss. 53 and 54 of Act XI of 1859. Under the former section, the terms of the certificate given under Sch. A are limited, and a purchaser under that section acquires the estate subject to all incumbrances existing at the time of sale, whether created before or after the default, and even up to the date of the sale; but there is no such limitation to the terms of a certificate given to a purchaser under s. 54, and all incumbrances created after the date on which a purchase under that section takes effect, that is, after the date on

SALE FOR ARREARS OF REVENUE

—continued.

4. INCUMBRANCES—concluded.

which the default was committed, are void. A share of a talukh admitted to special registration, under ss 10 and 11 of Act XI of 1859, was advertised for sale under that Act in default of payment of the June kist of Government revenue. On the 25th July the recorded sharer mortgaged his interest in that share to the plaintiff. The sale took place on the 26th September, and the share was purchased by the defendant who obtained a sale certificate in due form under the Act declaring, in accordance with s. 28, that his title accrued from the 29th June, the day after the latest date allowed for payment of the June kist. Held that the mortgage was of no effect as an incumbrance under s. 54 of the Act. *CHOWDHRY JOGESSUR MULLICK v. KHETTER MOHUN PAL* [I. L. R., 17 Calc., 148]

(e) MADRAS ACT II OF 1864.

56. ——— *Mad. Act II of 1864—Sale of land mortgaged—Purchase by mortgagee—Equity of redemption*.—Where land has been mortgaged and while in the possession of the mortgagee sold for arrears of revenue under Madras Act II of 1864, and purchased by the mortgagee at the revenue sale, such sale does not necessarily deprive the mortgagee of his right to redeem. *JAYANTI LAKSHMIYA v. YERUDANDI PEDDA APPADU* [I. L. R., 7 Mad., 111]

(f) BENGAL ACT VII OF 1868.

57. ——— *Beng. Act VII of 1868, s. 12—Auction-purchaser, Right of—Lakhiraj grant—Onus probandi*.—A person seeking to obtain the benefit of s. 12, Bengal Act VII of 1868, must give some *prima facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section,—that is, an incumbrance imposed on the tenure by some one who previously held it. The law relating to lakhiraj grants reviewed and explained. *KOLASHDASHINX DOSSEE v. GOCOOMONI DOSSEE* [I. L. R., 8 Calc., 230 : 10 C. L. R., 41]

(g) N.-W. P. LAND REVENUE ACT.

58. ——— *N.-W. P. Land Revenue Act (XIX of 1873), ss. 166, 167, 168—Agriculturists' Loans Act (XII of 1884), s. 6—Takari loans—Sale of house in default of payment of loan—Effect of such sale*.—The provisions of ss. 166, 167, and 168 of the N.-W. P. Land Revenue Act, 1873, apply only to the sale of a patti or mahal. Where therefore a house upon which there existed a prior incumbrance was sold on account of the non-payment of certain takavi advances, it was held that such sale did not avoid the prior incumbrance. *SUREO SAMPAT PANDE v. BANJIE PRASAD MISHR* [I. L. R., 22 All., 321]

SALE FOR ARREARS OF REVENUE

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5. PURCHASERS, RIGHTS AND LIABILITIES

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talukh in this case having come into the possession of Government by resumption in 1841.—*Held* that the auction purchaser would have no better title, and could be in no better position than the Government at the time of resumption. **BULLOCK RAHMAN v PRANDRUP DUTT.** S W. R. 232

60 — Purchaser at sale on default of purchaser of rights of Government

—*Government proclamation*—*Act XI of 1859*—The Government having sold its zamindari rights in certain talukhs after a proclamation that the purchaser would be bound to abide by the settlements entered into by it with the defaulter talukhdars one of the talukhs a mehal, J C B, was purchased with this reservation by M, who then sued with out success to eject the proprietor of the said talukh. After this, M having defaulted in the payment of the Government revenue, the mehal was sold for arrears under Act XI of 1859 and purchased by G. *Held* that G was in a very different position from M (who had purchased the zamindari rights of the Government), and was not bound by the terms of the Government proclamation, but was as his sale certificate showed, the purchaser of an entire estate separately recorded on the Collector's rent roll. **GHOLAM MUHAMMAD v ASHOK JAN BIRRE.** 25 W. R., 86

61 — Right to resume and assess lakhiraj land.—*Act XI of 1859, s 54*—When the former proprietor had a right to bring a suit to resume and assess lakhiraj land, the auction-purchaser of his rights and interests acquired the same right under s 54, Act XI of 1859. **DAKSH MUMTER CHOWDHRAIN v FAQUEER CHUNDER NAHA.**

[W. R., 1864, 293]

62 — Period from which title of purchaser dates.—*Act I of 1845, s 20*—The title of an auction purchaser at a sale for arrears of revenue accrues not from the date of sale, but from the date on which the sale was confirmed, and certificate granted under s 20, Act I of 1845. **DREFOOT SINGH v MATHURANATH JAIN.** W. R., 1864, 278

63. — Liability for Government revenue.—*Right to recover money paid for arrears of revenue.*—*Act XI of 1859, s 21*—The purchaser of an estate sold for arrears of revenue on the 24th Pous the latest date of payment of the revenue due for the three months previous to Pous, is not entitled to recover from the defaulter the amount of revenue which he was subsequently obliged to pay for the month of Pous. **KHEME SOONDAREE DOSSIA v NUNDKOOAR GOPTIO.** 4 W. R., 75

SALE FOR ARREARS OF REVENUE

—continued.

5 PURCHASERS, RIGHTS AND LIABILITIES

OF—continued.

64. — *Suit for money paid for arrears of revenue—Character of Govern-*

ment revenue are situated. It is not therefore liable to apportionment, and the person who is the owner of a revenue-paying estate at a time when the payment of the revenue falls due is the only person liable for its payment. The purchaser of an estate which pays Government revenue takes it subject to all revenue and cesses whether in arrear or accruing. *Held* therefore, in a suit by a purchaser for a certain sum for Government revenue and cesses, which became due after the date of though due for a period previous to his purchase, which sum he alleged he had been compelled to pay to save his interest in the subject of his purchase that he was not entitled to recover. **CHITRAPUT BINGH v GRINDRA CHUNDER ROY.** I L R., 6 Calc, 389. 7 C. L. R., 456

See WOZEEK BEGUM v TULLOCHISA

[W. R., 1864, 373]

65 — *Registered occupant—Bombay Survey Act, of 1865*—Government revenue being a paramount charge on the land, it adheres to the land and to every portion of it independently of the hands into which it passes, or the subordinate rights that may have been created by the occupant out of his own qualified proprietorship, so that, even after a valid sale of the land by the occupant to a purchaser who neglects to get his name registered in his books of the Collector may, after giving notice of the failure to pay the revenue to the registered occupant in whom alone, according to the Bombay Survey Act, I of 1865, vests the right of conditional occupancy, put up the land for sale, and the purchaser takes occupancy rights free from all claims on the part of the first purchaser. **GURMO BHEDHRESWAR v VARDAN DANE.** 10 Bom, 419

66. — *Beng Reg XLIV of 1793, ss 5 and 7—Enhancement of rent.*—The object of s 5, Regulation XLIV of 1793 taken together with s 7, was not the destruction of the under tenures upon the soil of the parent estate for arrears of Government revenue. It only empowered the purchaser at a sale to avoid the subsisting engagements as to rent and to enhance the rent to that amount at which according to the established uses and rates of the pergunnah distinct, it would have stood had the cancelled engagement so avoided never existed. *Quære*—Whether such a power was given only to the purchaser or to him and his heirs, or whether it was a power attaching to the zamindari and passing to successive purchasers. **SHRINOMYER v SUTTER CHUNDER ROY.**

[2 W. R., P. C., 14]

S C. SHRINOMYER v SUTTER CHUNDER ROY

[10 Moore's I. A., 123]

SALE FOR ARREARS OF REVENUE —continued.

5. PURCHASERS, RIGHTS AND LIABILITIES OF—continued.

67. ————— *Beng. Reg. XI of 1822, ss. 30, 33—Beng. Reg. XLIV of 1793, s. 5—Beng. Reg. VIII of 1793, s. 51.*—A zamindari was sold for arrears of Government revenue under Regulation XI of 1822. The purchaser's representatives sued to enhance the rent of the under-tenure. *Held* that they had no right to enhance. The rights of the purchaser were defined by ss. 30 and 33 of Regulation XI of 1822, which were repealed by Act XII of 1811, and that Act, with the exception of the 1st and 2nd sections, was again repealed by Act I of 1845. Neither of the two last-mentioned statutes contains any saving of rights acquired under the statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers at sales for revenue arrears to purchasers at future sales. A sale for arrears of revenue cannot of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, alter the character of an under-tenure. *Semle*—S. 5, Regulation XLIV of 1793, is now of no force for any purpose but that of declaring the general principles upon which all the subsequent legislation has proceeded, *viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of a party with whom the perpetual settlement of the estate was made. Where an under-tenure existed at the time of the decennial settlement, the only right which the zamindar could exercise over it was that conferred by s. 51 of Regulation VIII of 1793. The decision in the case of *Surnomoyee v. Suttees Chunder Roy*, 10 Moore's I. A., 123, commented on, explained, and reiterated. *SATTASARAN GHOSAL v. MAHESH CHANDRA MITTER* 2 B. L. R., P. C., 23

S. C. SUTTO SURBUN GHOSAL v. MOHESH CHUNDER MITTER

[12 Moore's I. A., 263; 11 W. R., P. C., 10

S. C. in High Court, SUTTO CHURN GHOSAL v. MOHESH CHUNDER MITTER. SUTTO CHURN GHOSAL v. TABINEE CHURN GHOSE 3 W. R., 178

68. ————— *Certified purchaser—Act XI of 1859, s. 36—Suit by certified purchaser—Benamidar.*—A certified purchaser at a sale for arrears of revenue, suing to recover possession of land from which he has been ousted, is not debarred from the benefit of s. 36, Act XI of 1859, unless he has acknowledged himself to be a benamidar. *JADUR RAM DEB v. RAMLOCHUN MUDDUCK*

[5 W. R., 56

Review rejected 19 W. R., 189

69. ————— *Act XI of 1859, ss. 36 and 53—Purchase by former proprietor.*—One of the co-sharers in an estate which had been sold under Act XI of 1859 sued to recover her share from the certified purchaser (M), himself one of the original owners. Her case was that she provided a portion of the purchase-money, but that her name was not registered on account of M's having no written authority to act on her behalf. M, however,

SALE FOR ARREARS OF REVENUE —continued.

5. PURCHASERS, RIGHTS AND LIABILITIES OF—continued.

executed an ikramnamah in which he admitted receipt of the purchase-money of plaintiff's 2 annas share, and covenanted to give her possession. Defendant denied having received any contribution or consideration-money from the plaintiff, though admitting execution of the ikramnamah. *Held* that no separate title was given to the plaintiff by the ikramnamah, and that the suit was substantially one to oust a certified purchaser on the ground that part of the purchase was made on behalf of another person, and the suit was therefore barred by s. 36 of Act XI of 1859. *Held* also that there is nothing in Act XI of 1859 which makes it illegal for a former proprietor or co-sharer to be a purchaser of his estate at a sale for arrears due on that estate. *NEYNUM v. MUZUTPUR WAHID* 11 W. R., 265

70. ————— *Decree setting aside sale, Effect of not executing, within six months—Sale, Validity of—Right of auction-purchaser to bring suit for declaration of title and possession—Revenue Sale Law (Act XI of 1859), s. 34.*—Certain property having been sold for arrears of Government revenue, the defaulting tenant brought a suit in the Civil Court to have the sale set aside, and obtained a decree which he did not attempt to execute till after the expiry of six months from its date. *Held*, in a suit brought by the auction-purchaser to recover possession of the share he had brought at the sale, that such non-execution of the decree had the effect of restoring the sale so far as it concerned the defaulter, and that the plaintiff was entitled to succeed. *ABDUL LOTIF v. YOUSUFF ALI* [I. L. R., 21 Calc., 255

71. ————— *Liability of purchaser at a sale, who enters into possession of the purchased property, to account for mesne profits to the person in whose favour the decree is subsequently reversed.*—A purchaser of property at a sale under the Madras Revenue Recovery Act, who enters into possession thereof, is in rightful possession until the decree is set aside. He is not therefore a trespasser and liable to make good any loss sustained by the rightful owner by being kept out of possession; but he is bound to account for mesne profits, the calculation of which is to be based on a proper discharge of the stewardship of the property. *Dakhina Mohun Roy Chowdhry v. Saroda Mohun Roy Chowdhry*, I. L. R., 21 Calc., 142; L. R., 20 I. A., 160, cited and followed. *PERUMAL UDAYAR v. KRISHNAMA CHETTYAR* I. L. R., 17 Mad., 251

72. ————— *Act XI of 1859, s. 54—Sale of share of Hindu widow—Effect of sale on reversionary interest.*—Where a share of an estate held by a Hindu widow was sold for arrears of revenue, it was contended that under s. 54 of Act XI of 1859, the estate acquired by the purchaser lasted only during the lifetime of the widow. *Held* that the purchaser did not take any interest limited to the life of the widow, but that the

SALE FOR ARREARS OF REVENUE

—continued

PURCHASERS RIGHTS AND LIABILITIES

Of—continued

entire share passed by the sale DEBI DAS CHOW
DHURI & BIPRO CHARAN GHOSAL

[I L R, 22 Calc, 641]

73 ———— Act XI of 1859
s 14—An equal portion of an estate in arrear—
Arrear separately deposited by co sharers of other
portions—Certificate of sale issued jointly to all
the co sharers—Share of each co sharer in the
purchased portion—Transfer of Property Act (IV
of 1882) s 45—Presumption—Where an estate was
divided into several shares and one of them was left

fetch a price sufficient to cover the sum in arrears
and each of the co sharers paid the entire amount of
arrear separately and the Collector issued a certifi-
cate of sale jointly to them—Held that the differ-
ent sharers should be entitled to equal shares in the
purchased estate irrespective of their shares in the
parent estate

how
which
sum of
of the funds an equal share DEBI PERSHAD &
AELIO ROER 4 C W N, 465

74 ———— Purchaser at a
revenue sale—Act XI of 1859 ss 29 35 and 37—
Entire estate Meaning of—Effect of estate
being recorded under a distinct number on the rent
roll with a separate revenue assessed upon it—
Protected interest—When an estate is recorded
under a distinct number on the town or rent roll of
the Collector and the sale
chaser under
estate sold in
comprising in
not prevent

Kemari Chowdhrami v Kisan Chunder Roy 2 C
W N 229 referred to PRONATH MITTHER & KIRAN
CHANDRA POY I L R, 27 Calc, 290

75 ———— Mad Reg XXV
of 1802 s 12—Madras Revenue Recovery Act II
of 1864 ss 32 41—The purchaser at a revenue sale
is prima facie entitled to claim the full rate of
rent PALANI & PARAMASIVA

[I L R, 13 Mad, 479]

76 ———— Madras Revenue
Recovery Act (Mad Act II of 1864) ss 1 39
42—Rights of zemins in Malabar—Grant by
Government of waste land on a cowle—The
Collector of Malabar in 1869 let defendant 2 into

SALE FOR ARREARS OF REVENUE

—continued

PURCHASERS RIGHTS AND LIABILITIES

Of—concluded

Recovery Act 1864 and sold to defendant 3 The
plaintiff who was the zemini of the land had no notice
of the grant of either the cowle or the pottah he as-
serted his right to zemindagani in a petition presented to
the Collector at the time of the sale but the sale
proceeded without reference to his claim The pre-
sent suit was brought to set aside the sale Held
the interest of the zemini did not pass by the sale
SECRETARY OF STATE & ASHTAMURTHI

[I L R, 13 Mad, 89]

77 ———— Madras Revenue
Recovery Act (II of 1864) ss 42 44—Sale of
part of a holding for arrears of revenue due on
another part—The plaintiff sued as the purchaser
under a Court sale for possession of certain land
which the defendant's vendor had purchased at a
sale held under the Madras Revenue Recovery Act
for arrears of revenue accrued due on other land
belonging to the judgment debtor Held that
under the sale for arrears of revenue the land had
passed to the defendant's vendor and that the suit
should be dismissed SAMA & STRINIVASA

[I L R, 13 Mad, 477]

78 ———— Madras Revenue
Recovery Act (Mad Act II of 1864) s 42—
Incumbrance—Permanent lease at a low rent—
One of the villages in a mitta was demised by the
mittadar to A on a permanent lease at a rate below
both the full assessment and the proportion of re-
venue payable upon it The lessee's interest was
brought to sale in execution of a decree and pur-
chased by B and ultimately was sold in 1884 to the
plaintiff who now sued the tenant in possession to
enforce an exchange of pottah and muchalka In
the interval viz in 1833 the village was sold for
arrears of revenue under Madras Act II of 1864 to
C and the defendant claimed to hold the land from
C Held that the permanent lease was an incum-
brance under the Madras Revenue Recovery Act
1864 s 42 and was voidable by the purchaser at
the revenue sale although it had not been declared
to be invalid by the Collector PARAMASIVA &
SURIANARAYANA I L R, 13 Mad, 144

6 DEPOSIT TO STATE SALE

79 ———— Tender of full amount of
arrears of revenue—Madras Revenue Re-
covery Act s 37—Sale for arrears accrued since
attachment—When a defaulter whose land has been
attached and is being brought to sale for arrears of
revenue tenders the full amount of the arrears of

SALE FOR ARREARS OF REVENUE

—continued.

6. DEPOSIT TO STAY SALE—continued.

80. ——— Right of person making deposit—*Act I of 1845, s. 9.*—By Act I of 1845, s. 9, it is enacted, with reference to sales for arrears of revenue, that Collectors shall, at any time before sunset of the latest day of payment, receive as a deposit, from any party, not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate; and if the party depositing, whose money shall have been so credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit, with interest, from the proprietors of the estate. *Held* that the person so depositing money for arrears does not thereby acquire any lien on the estate. **FAGAN v. SREEMOTEE DOSSEE**

[Marsh., 223]

S. C. SREEMOTEE DOSSEE v. FAGAN . 2 May, 75

81. ——— Right of one proprietor against co-proprietors—*Right against patnidar of co-proprietor.*—A proprietor who has paid his own and his defaulting co-proprietor's share of the Government revenue to save the estate from sale, can recover from him the co-proprietor's share of the revenue, but he cannot recover it from the latter's patnidar, whose only liability was to pay his rent to his lessor. **BYKUNTATH ACHARJEE v. GOOROO CHURN BOSE** 7 W. R., 247

82. ——— Right of person both proprietor and mortgagee—*Payment made as mortgagee to save estate from sale.*—A person who is both proprietor and mortgagee is not entitled as mortgagee to claim a deduction on account of Government revenue paid by him to save the estate from sale for arrears of revenue, when after resumption it ceased to be a *lakhimj* estate, which payment it was his duty to have made in his capacity of proprietor. **DOOLAR CHUNDER v. DAMOODUR NARAIN**

[3 W. R., 162]

83. ——— Voluntary payment—*Right of mortgagee to recover revenue paid.*—Suit for Government revenue paid by mortgagee in possession of property mortgaged for a debt secured by an instalment-bond executed in his favour by the mortgagor through a *moktear*. Although the plaintiff could not prove the execution by the defendant of the power of attorney in the name of the person alleged to have signed the bond for the defendant, yet as the plaintiff had paid the arrears of revenue due on the mortgaged property in the *bona fide* belief that he had a rightful interest in it, and would thereby save the property from sale, and be entitled to recover the money so paid, such payment was held to be not officious, and the suit was decreed. **BADAM KOO-WUR v. LALLA SEETUL PERSHAD** 5 W. R., 126

84. ——— *Act XI of 1859, s. 9.*—Suit by mortgagee to recover deposit of arrears of revenue.—A mortgagee who obtained a

SALE FOR ARREARS OF REVENUE

—continued.

6. DEPOSIT TO STAY SALE—continued.

decree for possession with mesne profits on 11th May 1864 sued the mortgagor, under s. 9, Act XI of 1859, to recover a sum alleged to have been paid by plaintiff on account of Government revenue for the quarterly kist falling due on the 25th June following. *Held* that as at the time the deposit was made the plaintiff was the proprietor of the estate in arrears, he was not a party contemplated in s. 9, and the suit did not lie. **JUSSODA DOSSEE v. MARUNGINER DOSSEE** 12 W. R., 249

85. ——— *Sale afterwards set aside.*—*Payment by purchaser made pending proceedings to set aside sale to save estate from further sale.*—Plaintiff, the inchoate owner of an estate purchased by him at a sale in execution of a decree against it, was held justified, whilst the proceedings with regard to the validity of the sale were pending, in preserving the estate from sale to another, whether for arrears of Government revenue or for the amount of a decree for which the estate had been attached, and when the sale to him was set aside and restored to *A*, entitled to be repaid any amounts *bona fide* paid by him for the preservation of the estate. If *A* made any arrangement with *mokuraridars* by which the latter stipulated to pay the Government revenue for him, plaintiff could not recover from the *mokuraridars*, there being no privity between him and them. His remedy was against *A*, who again had his remedy against the *mokuraridars*. **HOSSEIN BUKSH KHAN v. ROY DIJUNPUT SING** 18 W. R., 289

86. ——— Liability of estate held by Hindu widow for debt incurred to person making payment to protect tenure—*Act I of 1845, s. 9.*—An estate mortgaged was about to be sold for arrears of Government revenue, when it was saved from sale by the mortgagee depositing a sum sufficient to discharge the revenue. The mortgagee brought a suit against the person in possession of the talukh, the Hindu widow of the original mortgagor, seeking, under s. 9, Act I of 1845, to obtain repayment from her personally of the money paid to save the sale of the talukh, not making the reversioners defendants, and not praying that the talukh in its entirety might be sold to pay the amount due. A decree was given in that suit to the mortgagee, and on execution of that decree the reversioners intervened. *Held* that the mortgagee and those claiming under him had no charge on the estate, and were not entitled to have it sold in its entirety to pay the amount which was paid in to stop the sale of the estate. The action brought under s. 9, Act I of 1845, was only a personal action, and the decree gave no remedy against the land, the sale of which for arrears of revenue had been stopped by the deposit. In such a suit the question is not whether the person who pays the arrears acquires thereby a charge on the talukh which he saves from sale, but whether he seeks to enforce that right: he must do so in a suit properly framed for that purpose and not merely in a suit which is confined to a personal remedy against the person in possession of the talukh.

SALE FOR ARREARS OF REVENUE

—continued

■ DEPOSIT TO STAY SALE—continued

If the person who so pays the arrears of rent seeks repayment only, under the section and law cited, as against the person in possession of the talukh who has only a limited interest therein, and confines his suit to

person the object of which is to recover, or to charge an estate of which a Hindu widow is the proprietress she will, as defendant, represent and protect the estate, as well in respect of her own as of the reversionary interest. *DOGENDER CHUNDER GHOSH v. DOSSER*. 8 W R, P. C., 17

■ C AUGENDER CHUNDER GHOSH v. KAMINER DOSSER. 11 Moore's I A, 241

87. — Payment by patnidar to save tenure from sale—*Mistake in Collectorate in crediting payment as deposit*—The payment of revenue into the Collectorate by a patnidar to

he to take a receipt showing that the money was received as a deposit and not as a payment of revenue, does not render the patnidar liable. *JOTENDER MOHUN TAGORE v. KISHEN MONER DABER*

[W. R., 1884, Act X, 11

88. — Payment by shareholder — *Voluntary payment of arrear of revenue—Right to reimbursement—Act XI of 1859 s 13*—A shareholder voluntarily coming forward and paying an arrear of revenue due by a defaulting co shareholder who has a separate account, before the share of such

by whom defaulted to repay the amount advanced. *KISHEN CHUNDER GHOSH v. MUDUN MOHUN MOZUMDAR*. 7 W R, 385

89. — Right of suit to recover amount of deposit—*Act XI of 1859, s 9—Suit to recover amount paid as deposit to save estate from sale*—Where a party pays into the Collectorate, under the provisions of s 9 Act XI of 1859 arrears of

HILLS. 11 W. R., 377

90. — Right of suit to recover amount deposited—*Payment made by mokurardar for predecessor—Agents of revenue in excess of lease—Voluntary payment—Installments of Government revenue paid by a mokurardar on account of his predecessor, being necessary payments made to save the estate from sale, are recoverable, but*

SALE FOR ARREARS OF REVENUE

—continued

■ DEPOSIT TO STAY SALE—continued,

not under Act X of 1859 Payments on account of Government revenue in excess of lease are not recoverable. *BUNWARKE KISHORE v. JOY CHUNDER GOSWAMI*. 2 W R, 262

91. — Obligation of lender of money to stay sale *Necessity*—A lender is not bound to inquire into the exact amount necessary to be borrowed to save an estate from a sale for arrears of Government revenue. It is sufficient if he satisfies himself of the existence of a necessity to justify him in lending to the estate for repayment. *NEFFER CHUNDER BANERJEE v. GUDDADHAR MUNDLE*. 2 W R, 122

92. — Right to contribution where part owner pays revenue due on whole estate to save his own interests—*Madras Revenue Recovery Act, s 35—Contract Act ss 69, 70*—In 1881, while the pottah of certain land held on raiyatwari tenure stood in the name of defendant No 1, the real owner being defendant No 2 the revenue fell into arrear. Subsequently plaintiff and defendant No 3 each bought a portion of the land and defendant No 3 sold his portion to defendant No 4. After this the land in plaintiff's possession was attached for the said arrears of revenue and plaintiff paid the whole amount to prevent a sale. Plaintiff sued to recover from defendants 1 to 4 a portion of the arrears paid by him. He also prayed that the land in the possession of defendant No 4 might be held liable. The claim was decreed, but on appeal by defendants 3 and 4 the suit was dismissed as against them. Plaintiff appealed, making defendant No 4 alone respondent. Held that plaintiff was entitled to a decree for contribution against defendant No 4 and to a charge on the land in his possession. *SEENAGIRI, PICHU*

[I. L. R., 11 Mad, 452

93. — Payment of arrears of village revenue by the assignee of a mortgage of portion of the village property in order to stay the sale—*Madras Revenue Recovery Act (Mad Act II of 1864) s 80—Defaulter—Registered and real owners*—The plaintiff was

from the village, in order to prevent its sale. In 1888 the plaintiff's 34th pottahs were sold in execution of the decree of 1885; the 85th defendant subject to a charge for the amount of the revenue arrears paid by the plaintiff. In 1890 the plaintiff instituted the present suit to recover from the entire village and from the defendants Nos 1 to 84 personally the amount of these arrears. Held that the 85th

their holdings, may be treated as defaulters within the

SALE FOR ARREARS OF REVENUE

—continued.

6. DEPOSIT TO STAY SALE—concluded.

meaning of s. 35 of that Act. *Sethagiri v. Pichu, I. L. R., 11 Mad., 457*, followed. *SRINIVASA THATHACHAR v. RAMA AYYAN I. L. R., 17 Mad., 247*

7. SALE-PROCEEDS.

94. ——— Right to surplus proceeds—*Estate subject to mortgage*.—When mortgaged lands are sold for arrears of Government revenue, not accrued through default of the mortgagee, any proceeds which may arise from the sale in excess of the arrears belong to the mortgagee, and he has a right of action for their recovery. *HERRA LALL CHOWDHURY v. JANAKERNATH MOOKERJEE*

[16 W. R., 223]

95. ——— Right to payment out of surplus proceeds—*Liability of purchaser to reimburse judgment-debtor*.—*Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 146—Act X of 1877, s. 316*.—A share of a mehal, arrears of Government revenue being due in respect of the whole mehal, was sold in execution of a decree. The existence of the arrears was notified at the time of sale. The title of the purchaser to the share vested from the date of the sale, *Act X of 1877, s. 316*, being in force at that date. The Collector attached and realized the amount of the arrears out of the surplus sale-proceeds. *Held* that, inasmuch as at the date of the realization of the arrears out of the surplus sale-proceeds the purchaser was the proprietor of the share, and it and he were responsible under s. 146 of *Act XIX of 1873 (N.-W. P. Land Revenue Act)* for the arrears, the payment of the arrears out of the surplus sale-proceeds must be regarded as a payment made *in invitum* by the judgment-debtor for the purchaser, and the judgment-debtor was entitled to be reimbursed by the purchaser. *RAM CHAND v. FATEH SINGH*

[I. L. R., 6 All., 112]

96. ——— Suit for sale-proceeds by mortgagee—*Omission to give notice of charge on estate sold*.—*A* purchased certain villages in the name of his son *B*. *A*, being indebted to *C*, executed a mortgage-bond and deposited the title-deeds of those villages with *C* as security for the debt. *C* afterwards sued *A* for recovery of the mortgage-debt, and ultimately obtained a decree in his favour. Pending this suit, *A* died and was succeeded by *B*, his heir, against whom the suit was revived. *B* became a defaulter to Government, when the Government authorities seized the villages, and took steps for bringing them to sale to satisfy the Government demands. *C* informed the Government officer of his claim, and petitioned to have the sale stayed, but the Collector sold the villages as the property of *B*, suppressing the notice of the equitable charge of *C* upon the villages. *C* then sued *B*, the Collector, and the auction-purchasers, claiming to be entitled to the sale-proceeds of the villages in the hands of the Government in satisfaction of his mortgage-debt. The Sudder Dewany Court dismissed the plaintiff's claim, on the ground that the decree made in the suit against *A* was against the effects of *A*, and only

SALE FOR ARREARS OF REVENUE

—continued.

7. SALE-PROCEEDS—concluded.

applied to such property as *B* was in possession of at that time; and that, as it had been sold to realize the demands of Government, the decree did not apply to the villages. This decision was reversed on appeal, the Judicial Committee holding, first, that the suit was properly instituted for recovery of the sale-proceeds in possession of Government, as the decree obtained by *C* against *B* operated as a conversion of the estate of *A*, making it assets in *B*'s hands, which *C* had a right to follow; secondly, that as the Government had notice of *C*'s equitable charge upon the villages, and suppressed that fact at the auction-sale to the purchasers, there was a clear equity in *C* to call upon the Government for payment out of the auction-proceeds received by them, and an account was directed of the amount received by the Collector from the sale of the villages with interest, so far as the amount received would extend to the payment of *C*'s mortgage-debt. *Seemle*.—Where property is sold by Government for general debts, and not for arrears of revenue, they sell only the interest of the debtor, and not the title to the vendor a title. *DOUGLAS v. ...*

[5 Moore's I. A., 271]

8. SETTING ASIDE SALE.

(a) IRREGULARITY.

97. ——— Irregularity in conduct of sale—*Act XI of 1859, ss. 25, 26, 27-33—Substantial injury—Form of petition—Remedy by suit*.—The object of the Revenue Sale Law (XI of 1859) is to give a title to the purchaser which shall not be open to challenge by anybody; and the only ground on which a revenue sale can be set aside is (s. 25) that of irregularity in conducting the sale, in which case the Commissioner can set it aside on a petition of appeal presented to him within fifteen days of the sale. The petition may disclose a case of hardship or injustice where irregularity does not exist, as, for instance, that the sale has taken place where no arrear is due, and under such circumstances the Government, under s. 26, may set aside the sale. If the Commissioner will not interfere, the party aggrieved may, within one year of the sale becoming conclusive (s. 27), bring an action in the Civil Court under s. 33, and the Court may set aside the sale on proof of irregularity and substantial injury caused thereby. If no irregularity producing substantial injury is proved, the Civil Court cannot entertain an action to set aside a sale for arrears, and the only course open to an injured party is by a suit for damages as provided for in s. 33. *WOMESH CHUNDER CHATTERJEE v. COLLECTOR OF 24-PERGUNNAHS. WOMESH CHUNDER CHATTERJEE v. ISHARUTOOLLAH*

[8 W. R., 439]

98. ——— Omission to give notice of sale—*Act IX of 1859, s. 33—Material injury—Setting aside sale, Ground for*.—To sell an estate for arrears under *Act XI of 1859*, after lulling the

SALE FOR ARREARS OF REVENUE

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■ SETTING ASIDE SALE—continued

proprietor into a false security by failure to give him a notice which the law prescribes as a condition precedent of a sale is of itself a very material injury irrespective of the amount of purchase money realized and one amply sufficient to warrant a Court in annulling the sale under s 33. **MOHABEER PRER SHAD SINGH v COLLECTOR OF TIRHOOT**

[15 W R, 137

99 ——— Omission to serve notice on minor defaulter—*Madras Revenue Recovery Act (II of 1864)* ss 20 27—*Mad Reg V of 1804* s 20—A mita consisting of an unsurveyed village of which the plaintiffs (minors) were the registered proprietors of an undivided moiety was brought to sale for arrears of kist and was purchased for the plaintiffs by their guardian duly appointed under Reg V of 1804 s 20. The sale was

The sale took place in September and defendant No 2 became the purchaser. It was admitted that a division of the village was impracticable. In a suit by the plaintiffs by their mother and next friend to set aside the sale—*Held* since service of a demand upon the defaulter is an essential preliminary to sale the sale was invalid so far as the share of the plaintiffs was concerned and the sale as a whole was vitiated by the irregularity. **MEKAPER UMA v COLLECTOR OF SALEM**

[I L R, 12 Mad, 445

100 ——— Irregularity in issue of notice—*Ground for setting aside sale—Damage to defaulter*—A sale under Act VI of 1859 may not be set aside on the ground of irregularity in the issue of notices unless such irregularity is shown to have caused loss or damage to the defaulter. **LULKETA KOOR v COLLECTOR OF TIRHOOT**

[19 W R, 283

the estates or shares of estates and the number they bear in the Collector's office. **AMIRUNESSA KHATOON v SECRETARY OF STATE FOR INDIA**

[I L R, 10 Calc, 63

S C AMIRUNESSA KHATOON v BROWNE

[13 C L R, 131

ZENKALEE KOOR v LALLA DOORGA PERSHAD

[16 W R, 149

102 ——— Sale Notification—*Act XI of 1859* s 6—*Description—Residue of an*

SALE FOR ARREARS OF REVENUE

—continued

8 SETTING ASIDE SALE—continued

estate—In a notification of sale under Act VI of 1859 the share of an estate intended to be put up for sale must be so described that there can be no mistake about it. Merely advertising that the residue of an estate is to be sold without giving further particulars and stating what that residue cannot be considered to be a sufficient description. **ANVADA CHARAN VUKHUTIE v KISHORI MOHON RAI**

[2 C W N, 479

103 ——— Notification of sale, Omission in—*Revenue paying estate—Sale of share of an estate—Recorded proprietors—Omission of names of proprietors—Irregularity—Act XI of 1859* ss 6 34—When a notification of sale of a share in a revenue paying estate is issued under s 6 Act XI of 1859 the circumstance that such notification does not contain the names of all the recorded proprietors of the share but only the name of one of them does not amount to an irregularity within the meaning of s 33 Act XI of 1859. **SECRETARY OF STATE FOR INDIA v RASBHEARY VOCKERJEE**

[I L R, 9 Calc, 581 12 C L R, 27

Collector under s 6 of Act XI of 1859 fixing the 31st May 1879 as the date for holding the sale was affixed in the places mentioned in the section on the 2nd May 1879. *certained*
Sunday of the Act
postponing the sale till the 2nd June. On that

Act had not been affixed thirty days before the day fixed by it for holding the same the requirements of that section had not been fulfilled and the irregularity was not cured by the notification of the 26th May. *Held* further that the Court was not bound under s 8 of Bengal Act VII of 1863 to presume conclusively that the provisions of s 6 of Act XI of 1859 as regards the fixing of the date of sale had been complied with. Under s 8 of Bengal Act VII of 1863 the effect of a certificate of title having been given to the purchaser is merely that the Court is bound to presume conclusively the due service and posting of notices. **BAL MOKUND LALL v JIRJU DHUA ROY**

I L R, 11 Calc, 271

S C BAL MOKUND LALL v TRIBHODHUN ROY

[11 C L R, 466

105 ——— Material irregularity—*Substantial injury—Act XI of 1859*, ss 6 7, 20 23 33—*Certificate—Beng Act VII of 1863* s 8—*Per GARTH C J MITTER PRINSEP and PIGOT JJ*—A non compliance with the provisions of s 6 Act XI of 1859 is not a mere irregularity and is not one of those errors in procedure which are

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SALE FOR ARREARS OF REVENUE

—continued

8 SETTING ASIDE SALE —continued

Court cannot cancel the sale unless such substantial injury has been established. The words "except as otherwise hereinafter provided" which occur in cl (1) of s 33 refer to the action which the Collector is empowered to take *suo motu* under cl (3) of the same section and have no relation to the remedy provided by s 59. Direct evidence is not necessary to connect inadequacy of price realized with a material irregularity, where the latter has been proved and the relation of cause and effect between the two may be inferred where such inference is reasonable. But where the only irregularity shown was an omission to display the notice of sale in the Collector's office and there was no evidence to show that this affected the attendance of buyers at a place many miles distant where the sale actually took place the inadequacy of price being susceptible of other explanation. — *Held* that it was not shown that the irregularity referred to had caused substantial loss and that there was therefore no ground for setting the sale aside. **BOMMAYYA NAIDU v. CHIDAMBARAM CHETTIAR**

[1 L R, 23 Mad, 440]

112 — Act XI of 1859,

s 5—*Attachment by order of Civil Court—Latest day of payment, Attachment subsequent to—*In a suit to set aside the sale of an estate for arrears of revenue one of the grounds taken by the plaintiff was that the estate which was under attachment by an order of the Civil Court at the time of the sale was sold without due observance of the formalities prescribed by s 5 Act XI of 1859. The date fixed for payment of the arrears for which the estate was sold was the 7th June 1859. The date of attachment was on August following. *Held* that s 5 of Act XI of 1859 provides for cases in which the attachment has been made at least fifteen days before the last date of payment for which it is sought to bring the estate to sale. That section would not therefore apply to a case like the present in which the attachment was after the last day of payment and after the estate had become liable to sale for arrears of Government revenue. **Bussars Lal Sahu v. Mohabir Tersad Singh** 12 B L R, 297 L R 11 A 89 referred to **HOWMET LAL v. RADHA KRISHNA BRUTTACHANJEE**

[1 L R, 22 Calc, 788]

113 — Bombay Land

Revenue Crds (Bom Act V of 1879), ss 56, 57, 150 and 153—Confirmation of sale by Collector—Omission of Collector to make—Declaration of forfeiture before sale—A sale of a holding for

fact that a sale has taken place *in prima facie* evidence that forfeiture had been declared. **GANPATI v. GANGARAY** 1 L R, 21 Bom, 381

SALE FOR ARREARS OF REVENUE

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8 SETTING ASIDE SALE —continued

114 — Irregularity in refusing fine for non attendance, tendered by proprietors—Act XI of 1859—Procedure—Bengal Act II of 1868—Time for non attendance of proprietors before Collector in partition proceedings under Bengal Reg XII of 1814—In sales held by the Collector for the realization of Government demands realizable as arrears of revenue the procedure laid down in Bengal Act VII of 1868 is to be followed. Therefore where a fine had been imposed for non attendance of proprietors before the Deputy Collector for the purpose of a partition under Regulation XIX of 1814 and the amount had been ordered to be paid on a given day but was not so paid but tendered subsequently, — *Held* that the Collector ought not to have sold the property of the defaulters. He was bound to receive the amount tendered. **MOHAN RAM JHA v. SHIB DUTT SINGH**

[3 B L R, 230 17 W R, 21]

115 — Irregularity in not accepting highest bid—Obligation of Collector to sell to highest bidder—At a sale for default of payment of Government revenue, the Collector is bound to sell to the highest bidder even though (as in this case) that bidder be the husband of the person in arrears. **CORNELL v. OODAY LARA CHOWDHRAIN**

[3 W R, 372]

(5) OTHER GROUNDS

116 — Fraud—Act XI of 1859, ss 6,

7, 19—Ground for setting aside sale—In a suit to set aside a sale for arrears of Government revenue held on the 26th March 1879 it was alleged that the grounds for setting the sale aside (1) that the arrears had been paid into the Collector's treasury on the previous day and a receipt granted for them and

and (2) that the Collector was not served according to law and (3) that the purchaser at the sale had dissuaded other persons from bidding as alleged. *Held* that the sale was valid as no order had been made by the Collector in writing exempting the property from sale under s 18 of Act XI of 1859, mere payment of arrears into the treasury without an order under s 18 not having in itself the effect of

that
of
pay
such

that it was no fraud for persons at a sale for arrears of revenue to combine not to bid against each other

SALE FOR ARREARS OF REVENUE

—continued.

8. SETTING ASIDE SALE—continued.

See *Bal Mokoond Lall v. Jirjudhun Roy*, I. L. R., 9 Calc., 271; 11 C. L. R., 466. *GOBIND CHUN-DRA GANGOPADHYA v. SHERAJUNNISSA BIBI*

[13 C. L. R., 1

117. ———— *Act X of 1876*, 4—*Jurisdiction of Civil Court—Fraud of officers conducting sale*.—S. 4, cl. (c), of Act X of 1876 excepts from the jurisdiction of the Civil Court claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quere*—Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue. *BALKRISHNA VASUDEV v. MADHAVRAY NARAYAN*. I. L. R., 5 Bom., 73

118. ———— *Act XI of 1859*, s. 33.—S. 33 of Act XI of 1859 should not be read as meaning that under no possible circumstances can a suit be brought to set aside a sale on the ground of fraud. *AMIRUNNESSA KHATOON v. SECRETARY OF STATE FOR INDIA IN COUNCIL*

[I. L. R., 10 Calc., 63

S. C. AMIRUNNESSA KHATOON v. BROWNE

[13 C. L. R., 131

119. ———— *Beng. Act VII of 1868—Sale improperly conducted*.—In a suit by a mortgagee for possession of the mortgaged property which had been sold under Bengal Act VII of 1868, where plaintiff alleged that the sale was brought about by fraudulent withholding of the rents, and that the mortgagor had purchased it benami,—*Held* that, where a sale has been held under the provisions of Bengal Act VII of 1868, but improperly and irregularly, it can only be questioned by a suit brought within proper time and against proper parties. *RAJ LUKHEE DASSEE v. PEARUN BIBEE* 23 W. R., 82

120. ———— *Bidders, Dissuasion of*.—In a suit by some of the co-sharers in a mouzah against the others to set aside a sale for arrears of revenue, the finding of the Court of first instance established that a certain co-sharer in a mouzah had intentionally withheld the payment of a small arrear of Government revenue, and had thereby caused the property to be sold under Act XI of 1859, purchasing it himself at a small sum in the name of certain other persons; and had also dissuaded certain intending bidders from bidding at such sale. *Held* that the evidence did not warrant such a finding, but that, assuming these facts to have been established, the right of the co-sharer to buy up the estate at the revenue-sale was not based upon any right of interest common to himself and his co-sharers, and that, in the absence of misrepresentation or concealment, the fact that he had intentionally defaulted as found, did not constitute fraud; nor did the fact that he had deterred others from bidding for the property, necessarily constitute an act of fraud. *Bhoobun Chunder Sen v. Ram Soonder Surma Mozoomdar*,

SALE FOR ARREARS OF REVENUE

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8. SETTING ASIDE SALE—continued.

I. L. R., 3 Calc., 300, distinguished. *DOORGA SINGH v. SHEO PERSHAD SINGH*

[I. L. R., 16 Calc., 194

121. ———— *Sale without attachment—Attachment of property sold, not necessary—Sale ultra vires—Act XI of 1859*, ss. 5, 17.—The right to set aside a sale for arrears of Government revenue under Act XI of 1859 is not confined to proprietors alone, but extends to all persons, such as mortgagees, having an interest in the property antecedent to its sale. *Watson v. Sreemunt Lal Khan*, 5 Moore's I. A., 447, relied on. There is nothing in s. 5 of Act XI of 1859 which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale. A sale in contravention of ss. 5 and 17 of Act XI of 1859 is *ultra vires* and therefore void. The principle laid down by the Full Bench in the case of *Lala Mobarak Lal v. Secretary of State for India in Council*, I. L. R., 11 Calc., 200, applied. *GOBIND LAL ROY v. BIPRODAS ROY*

[I. L. R., 17 Calc., 398

122. ———— *Act XI of 1859 (Bengal Revenue Sale Law)*, ss. 3, 8, and 33—*Bengal Excise Act (Beng. Act VII of 1868)*, s. 2—*Unauthorized sale by Collector—Jurisdiction of Civil Court*.—Act XI of 1859, the Bengal Revenue Sale law, providing for the sale of estates in arrear of payment of revenue, does not sanction, and by plain implication forbids, the sale of any estate which is not at the time in arrear of such payment. The whole clauses, in so far as they relate to sales, or to their challenge, as well as the provisions of Bengal Act VII of 1868, are framed upon the express footing that they are to be applicable to the sale of estates which are in arrear of duty. A Collector had sold an estate, purporting to act under Act XI of 1859, for a supposed arrear of revenue. There was, however, only an erroneous debit in the Collectorate books against the estate, in excess of the revenue actually assessed upon it, chargeable against it, and due from it. *Held* that the sale was without authority; that the Civil Court had jurisdiction to declare the sale void; and that the provisions of s. 33 of Act XI of 1859, relating to an appeal to the Commissioner of Revenue, did not exclude that jurisdiction. The enactment in s. 8 had no application to such a case. This was not a question about a transfer from the account of one revenue-paying estate to that of another, nor was it a claim for remission or abatement, which had not been duly allowed by the Government. S. 8 has no application, except there be (1) default in payment of the revenue, and (2) possession by the Collector of money of the defaulter not indisputably placed to his credit. But here there was no default. All moneys paid by the appellants were, credited, and their alleged default was based upon erroneous debit entries to which they were not parties. *BALKRISHN DAS v. SIMPSON*. I. L. R., 25 Calc., 833
L. R., 25 I. A., 151
2 C. W. N., 513

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8 SETTING ASIDE SALE—continued

123 ———— Sale where no arrears due

—*Bona fide purchase*—The sale of an estate for arrears of revenue where no such arrears exist is null and void even though it is regularly conducted and the purchase is made *bona fide* **SREKANT LALL GHOSH v SHAMA SOONDURZ DASSER**

[12 W R, 276]

RAM GOBIND ROY v. KUSHUFFUDZA

[15 W R, 141]

See **BAIJNATH SAHU v LALLA SITAL PRASAD**

[2 B L R, F B, 1 10 W R, F B, 66]

and **HARKEOD SINGH v BUNSIDHUR SINGH**

[I L R, 25 Calo, 876]

124 ———— Act XI of

1859—Where there has been a sale under Act XI of 1859 for arrears of revenue but it is found that no revenue is actually due to Government the sale must be set aside as not coming within the provisions of the Act **MANGINA KHATUN v COLLECTOR OF JESSORE** 3 B L R, Ap, 144 12 W R, 311

125 ———— Suit to set aside

sale—Sanction of Commissioner—A suit to set aside a sale for arrears of revenue on the ground that no arrears were due may be brought without previous sanction of the Commissioner **THAKOOR CHURN POY v COLLECTOR OF 24 PEBGUNNAHS**

[13 W R 336]

123 ———— Act XI of

1859, s 5—Act XI of 1859—Suit to set aside sale—Costs of partition—Sanction of Board of Revenue—*Beng Reg XIX of 1814*—On 12th June 1867 some of the proprietors of an estate applied to the Collector for a partition under Regulation XIX of

1814 In it was a column giving the shares into which the expenses of the partition were to be divided On the same day a notice was issued to the proprietors ordering in them to pay their respective quotas of the

proclamation should be issued in accordance with paragraph 4 of s 5 of Act XI of 1859 directing the plaintiffs as defaulters in two sums of Rs253 3 2 and Rs9 0 6 to pay the Government revenue On the 28th March such proclamation was issued accordingly Subsequently one of the plaintiffs came in and offered to pay all that was then due and outstanding His application was rejected and on the same day the 8th April the sale proceeded and the whole interest of the plaintiffs was sold for Rs16 9 00 The plain

SALE FOR ARREARS OF REVENUE

—continued

8 SETTING ASIDE SALE—continued

tiffs appealed to the Commissioner, but their appeal was dismissed The plaintiffs therefore brought a suit against the purchasers and the Collector for the recovery of the property and for cancellation of the sale Held that the sale was void There was no arrear of Government revenue justifying a sale under Acts XI of 1838 and XI of 1859 s 5 There could be no arrear until demand after sanction by the Board of Revenue and by the Lieutenant Governor of the estimate of expenses prepared by the Collector and fixed by the Commissioner The Board must give its sanction on in each case and the defendants failed to show that it had done so But even if the Commissioner had power finally to determine the amount and date of payment it was not shown that he had done so or supposing that he had that any fresh demand had been made upon the parties liable **HAR GOPAL DAS v RAY GOLAM SAHAI**

[5 B L R, 135 13 W R, 381]

127 ———— Unauthorized sale by Col

lector—Want of sanction—Subsequent confirmation—Accounts—Costs—The sale by a Collector of a whole talukh in one lot for arrears of revenue without specific authority previously conferred by the

proclamation of the surplus proceeds of the money by the defaulting proprietor The proprietor's acquiescence in a sale made, as he believed by the authority of the Board of Revenue did not give legal efficacy to a sale altogether void for the want of such authority, or bar his claim to annul the sale on that ground. The Courts below, without entering into any investigation of the profits made by the purchaser during his occupation of the estate assumed that he had reimbursed himself the amount of the purchase-money and interest out of the profits of the estate The Privy Council however saw no ground for such an assumption and directed that an account should be taken of the principal and interest due to the purchaser in respect of the purchase money paid by him and also of the net profits made by him out of the estate during his occupation and that on payment to him of whatever may appear due to him on taking such account possession of the talukh should be delivered to the proprietor The Privy Council further, acquitting the purchaser of all blame in the transaction reversed so much of the decrees of the Courts below as condemned him in costs and ordered each party to bear his own costs in all the Courts **MITTENDAT SINGH v HEIRS OF THE WIDOW OF JESWUNT SINGH**

[6 W R, P C, 15 8 Moore's L A, 42]

128 ———— Sale for arrears of revenue

of mitta held by tenants in common during minority of some of the owners—*Mad Reg X of 1831 s 1 2 3—Mad Reg V of 1801, s 14 (4) s 20*—A mitta held by tenants in common was sold for arrears of revenue

SALE FOR ARREARS OF REVENUE —continued.

8. SETTING ASIDE SALE—continued.

at a time when the owners of a moiety thereof were minors. In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the District Court held that Regulation X of 1831, s. 2, absolutely debarred the Collector from selling the estate of the minors during their minority and set aside the sale so far as their interests were concerned. *Held* on appeal that, the minors not being sole proprietors, their estate was not one of which the Court of Wards could assume the management, and therefore s. 2 of Regulation X of 1831 did not affect the sale. **KRISHNA v. MEKAMPERUMA. COLLECTOR OF SALEM v. MEKAMPERUMA**

[I. L. R., 10 Mad., 44]

129. ——— Payment of arrear of revenue through post office—*Act XI of 1859, s. 2—Payment by postal money-order.*—Where the revenue of an estate was sent through the post office by a money-order in sufficient time, but it did not, owing to the negligence of the post office, reach the Collector in due time and the estate was sold for arrears of revenue,—*Held* that the sale was rightly held. Payment to the post office is not equivalent to payment to the Collector, and the post office cannot be considered as the agent of the Collector. **BAIKANTHA NATH DUTT v. GUNGA PRASAD PURNAYAK** 4 C. W. N., 103

130. ——— Collector's order of exemption—*Act XI of 1859, ss. 18, 33.*—A Collector's order under s. 18 of Act XI of 1859 for exempting an estate from sale for arrears of revenue must be an absolute exemption, and not an order having effect as an exemption or not, according to what may happen, or be done, afterwards. It must not depend on an act which may, or may not, be performed. The High Court having set aside a sale, as contrary to the provisions of Act XI of 1859, upon a ground other than that declared and specified in an appeal made to the Commissioner of Revenue against the order for the sale, the Judicial Committee, referring to s. 33 as prohibiting such a course, reversed the decision of the High Court. **LALA GAURI SANKER LAL v. JANKI PERSHAD** I. L. R., 17 Calc., 809 [I. R., 17 I. A., 57]

131. ——— Exemption from sale of land under attachment by Collector—*Act XI of 1859, ss. 17, 25, 33—Beng. Act VII of 1868—Suit to set aside sale—Bengal Cess Act (Beng. Act IX of 1880)—Omission to specify ground of objection in revenue appeal.*—An estate sold for arrears of revenue had been previously brought to a judicial sale by a mortgagee, whose charge preceded that of a puisne incumbrancer, whom the present plaintiffs represented. It was not the consequence of the execution-sale that puisne incumbrancers, who were not parties to the prior mortgagee's suit, were displaced, or left with nothing but a claim against the surplus proceeds of the sale, if any; and on the facts, the present plaintiffs had a mortgagee's interest in the estate sold by the Collector,

SALE FOR ARREARS OF REVENUE —continued.

8. SETTING ASIDE SALE—continued.

entitling them to sue to have the sale for default in payment of revenue set aside, as contrary to Act XI of 1859. A sale for arrears of revenue, if for arrears which have accrued while the land has been subject to an order issued by the Collector under the Cess Act (Bengal Act IX of 1880), for the levy of road cess in arrear, is contrary to s. 17 of Act XI of 1859, such an order being an attachment within the meaning of that section. But under s. 33 of that Act, in every case where a sale for arrears of revenue is impeached, as being contrary to the provisions of Act XI of 1859, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under s. 25. The above provision in s. 33 applies where the sale has been irregularly conducted, and also where the sale has been illegal in consequence of an express provision for exemption of the land from sale for arrears having been contravened. **LALA GAURI SANKER LAL v. JANKI PERSHAD, I. L. R., 17 Calc., 809; L. R., 17 I. A., 57, referred to. GOBIND LAL ROY v. RAMJANAM MISSEER**

[I. L. R., 21 Calc., 70
L. R., 20 I. A., 165]

132. ——— Sunset law—*Beng. Act VII of 1868, s. 11—Revenue Sale Law (Act XI of 1859), s. 6.*—S. 11 of Bengal Act VII of 1868 makes the sunset law as enacted in s. 6 of Act XI of 1859 applicable to sales of tenures under the former Act. The refusal, therefore, of the Collector to accept payment of the amount due when tendered after sunset on the latest day for payment does not make the sale under Bengal Act VII of 1868 illegal. **AZIMUDDIN PATWARI v. SECRETARY OF STATE FOR INDIA** I. L. R., 21 Calc., 360

133. ——— Payment of arrears before sale without obtaining exemption from sale—*Act XI of 1859, ss. 6, 13, 14, and 33—Proceedings when share of estate is not sold at auction-sale—Ground for annulling sale not declared and specified in appeal to Commissioner.*—The plaintiffs and defendants were sharers in a certain estate, the plaintiffs being owners of a joint share, and the defendants the owners of other shares, in respect of which separate accounts had been opened in the Collector's register. The plaintiffs in March 1890 made default in the payment of Government revenue for their share, and it was advertised to be put up for sale on the 18th September 1890, under ss. 6 and 13 of Act XI of 1859, for recovery of the amount due, Rs 18-6. On the 16th September the plaintiff paid into the treasury of the Collectorate the amount of arrears due, and made an application that the joint share might be exempted from sale; receipts were given for the amount paid in, but no order was made on the application and the share was not exempted from sale. On the 16th September the joint share was put up for sale, but there being no bids the sale was postponed, and on the same day the Collector made an order under s. 14 of Act XI of 1859 that, unless the arrears were paid by the other sharers (the defendants) within ten days, the whole estate

SALE FOR ARREARS OF REVENUE

—continued

8 SETTING ASIDE SALE—continued

would be put up for sale. Notices of this order, provided for by a rule made under the Act by the Board of Revenue were given to the serving peon on the 2nd October for service on the defendants and the arrears were paid in by some of the defendants on the 4th and by others on the 7th October and eventually the Collector acting under s 14 of the Act granted on the 5th December 1890 a certificate of purchase and gave delivery of possession to the defendants. The plaintiffs appealed to the Com-

mesne profits—Held by PETHERAM C J and BEVERLEY J (AMBER ALI J dissenting) that the Collector not having exempted the share from sale the payment by the plaintiff of the arrears on the 16th September was no bar to the proceedings taken under s 14 of the Act. Held also that the defendants' purchase was not made invalid by the fact of

latter objection as it was not declared and specified in their grounds of appeal to the Commissioner in accordance with s 33 of the Act. *Gobind Lal Roy v Pamyanam Misser I L R 21 Cal 70*

share themselves when it was put up for sale on the 16th September. *Per BEVERLEY J*. Under s 6 of the Act the sale if it had taken place on the 15th September would have conveyed a good title to the defendants and under s 14 they are expressly declared to have the same rights as if the share had been purchased by them at the sale. *Per AMBER ALI J*.—The proceedings provided for by s 14 do not apply to the sale.

Collector;
sale conte

Privy Council in *Gobind Lal Roy v Pamyanam Misser I L R, 21 Cal 70* is a public sale held at a place prescribed by the proper authorities at which there are bidders and a possibility of competition. *Gossain Chutturebooy Dutt v Ishri Mul I L R. 21 Cal., 844*

134. — Benami purchase for de**SALE FOR ARREARS OF REVENUE**

—continued

8 SETTING ASIDE SALE—concluded

135. — Fraudulent purchase by judgment debtor—Act XI of 1859—Right of decree holder—In a suit to recover possession of a

said right title and interest *LALLA JUGGESSUR SANYAL v GOPAL LALL 15 W R, 54*

136. — Failure of consideration—Suit to set aside sale and recover purchase money on the ground that subject of sale was alluvial land and practically non-existent—An estate does not necessarily mean land but may denote julkur phul

Muddun Mohan Thakoor 18 Moore 1 A 467, be sold as an estate. A suit therefore by a purchaser of such an estate to have the sale set aside and recover his purchase money on the ground that the subject of his purchase was non-existent at the time of sale and had since remained so was held to be not maintainable. *GOVERNMENT v RADHAY SINGH [20 W R, 117]*

137. — Award of compensation to purchaser—Sale set aside under Beng Reg I of 1821—A sale in 1802 of lands for arrears of Government revenue was set aside by the mofussil and sadder commissions constituted under Bengal Regulation I of 1821 although no suit was brought to annul the sale until 1821 and the decision was affirmed by the Judicial Committee. But the sale having taken place by direction of the Government

S C DEEP NARAIN SINGH v LAL CHUTTERPUT SINGH 6 W R, P C, 27

9 MISCELLANEOUS CASES

138. — Act XI of 1859, s 5—Effect of notification under Act—Attachment—A notification issued under s 5 Act XI of 1859 is simply a public call on the debtor to pay his debt by a fixed date. It does not operate as an attachment by the Civil Court. *NURKOO PAM v RAMMOORAWUN SINGH 9 W R, 481*

SALE FOR ARREARS OF REVENUE —concluded.

9. MISCELLANEOUS CASES—concluded.

139. ——— Transfer of tenure from one Collectorate to another—*Payment of revenue—Notice of transfer.*—If a tenure is transferred from one Collectorate to another, and the holder of the tenure, after receiving notice of the transfer, continues to pay his revenue into the former Collectorate, he is not entitled to take credit for such payment. But if he pays before notice and obtains a receipt, such receipt is a quittance as against Government. *THAKOOR CHURN ROY v. COLLECTOR OF 24-PERGUNNAHS* . . . 13 W. R., 336

140. ——— Act XI of 1859, s. 31—*Recorded proprietor, Representative of—Execution of decree—Purchaser in execution of decree—Revenue sale—Deposit—Assignee.*—S. 31 of Act XI of 1859 must be read strictly. An assignee of the recorded proprietors is not their representative within the meaning of that section, and the Collector is justified in refusing to pay to such assignee, claiming on his own behalf, money held in deposit on account of the recorded proprietors. *SECRETARY OF STATE FOR INDIA IN COUNCIL v. MAJUM HOSSEIN KHAN*
[I. L. R., 11 Calc., 359]

SALE FOR ARREARS OF ROAD CESS.

See *BENGAL CESS ACT, 1871, s. 3.*

[I. L. R., 12 Calc., 430]

See *BENGAL CESS ACT, 1880, s. 47.*

[I. L. R., 24 Calc., 27]

See *BENGAL TENANCY ACT, s. 65.*

[I. L. R., 21 Calc., 722]

See *LIMITATION ACT, 1877, ART. 12.*

[I. L. R., 23 Calc., 775]

L. R., 23 I. A., 45

See *PUBLIC DEMANDS RECOVERY ACT, s. 2.*

[I. L. R., 14 Calc., 1]

I. L. R., 23 Calc., 641

See *PUBLIC DEMANDS RECOVERY ACT, s. 7.*

[I. L. R., 23 Calc., 775]

L. R., 23 I. A., 45

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT VII OF 1880.

See *CASES UNDER PUBLIC DEMANDS RECOVERY ACT.*

SALE IN EXECUTION OF DECREE.

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1 ——— Place of holding the sale—
Sale of moveable property in execution of decree—Practice—Under the Code of Civil Procedure (Act XIV of 1882), it is intended that a sale of moveable property attached in execution of a decree should ordinarily be held in some place within the jurisdiction of the Court ordering the sale. Good and sufficient reasons must be shown for directing otherwise. Where the only ground urged for directing a sale outside the Court's jurisdiction was that the property would probably fetch a better price, and it was found by the Court that a fair sale could be had on the spot—Held that no sufficient reason was shown for departing from the usual practice. *LAKSHMIBAI SAMPATAPUJA SINGH*
[I L R, 13 Bom, 22]

2 PERSON SELLING PROPERTY OF WHICH HE IS NOT, BUT AFTERWARDS BECOMES, OWNER

2 ——— Obligation to make good the sale out of subsequently acquired interest—*Vendor and purchaser—The doctrine—that where a person sells property which he does not own at the time of sale, but afterwards becomes the owner, he is bound to make good the sale out of the property subsequently acquired.*

does not apply to a case where the sale was made through the Court at the instance of an execution creditor, and was therefore compulsory. *ALUK-MONER DABER v BANER MADHUB CHUCKREBUTTY*
[I L R, 4 Calc, 677 3 C L R, 473]

3 OBJECTION TO SALE

3 ——— Dispossession of third party in execution—*Resistance or obstruction by stranger on delivery to auction purchaser—Civil Procedure Code, 1859 s 269—There was no provision in the Civil Procedure Code, 1877, similar to that contained*

SALE IN EXECUTION OF DECREE —continued.

3. OBJECTION TO SALE—concluded.

in s. 269 of Act VIII of 1859, which enabled the Court executing a decree to inquire into a complaint made by a person other than the defendant, on the ground of dispossession in the delivery of possession to the purchaser of immoveable property sold in execution of a decree; and therefore the only remedy of a person so dispossessed was by regular suit. *A*, a decree-holder, purchased certain property belonging to *B*, his judgment-debtor, at a sale, in execution of his decree, and delivery of possession to him was ordered. A stranger to the suit thereupon presented a petition to the Court executing the decree, setting up a title to a moiety of the property in question, and prayed for an investigation into his right, and for recovery of possession, on the ground that he had been dispossessed by *A*. *Held* that the application could not be maintained. *HARASATOOLLAH v. BROJONATH GHOSE*

[I. L. R., 3 Calc., 729 : 1 C. L. R., 517]

This omission is now rectified, and under the Civil Procedure Code, 1882, the Court has power to make an inquiry on the application of a third party dispossessed in execution.

4. ———— Decree, Impeachment of, by a stranger as fraudulent—*Civil Procedure Code (Act XIV of 1882), s. 287*.—In the execution of a decree ordering the sale of immoveable property, it is not competent for the Court to refuse to sell it because a stranger to the suit in which such decree was obtained, who is in possession of such property, impeaches the decree as having been obtained by fraud; the course open to him, if he wishes stay of execution, being to file a suit and obtain an injunction for that purpose. *PURSHOTTAM VITHAL v. PURSHOTTAM ISWAR*. I. L. R., 8 Bom., 532

4. STAY OF SALE.

5. ———— Stay of sale in regard to a particular property—*Other property of judgment-debtor*.—To save a particular property from sale, a judgment-debtor must show the value and condition of other properties in her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be made so as to avoid the sale of the property already attached. *DEB KUMARI BIBEE v. RAM LALL MOOKERJEE*. 3 B. L. R., Ap., 107 : 12 W. R., 66

6. ———— Stay of sale pending administration suit—*Mortgage decree—Right of secured creditor*.—In execution of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage-lien should be enforced, first, by sale of the property specifically mortgaged; and, secondly, if the debt remained unsatisfied by the sale of the other property in the possession of the judgment-debtors, the judgment-creditor proceeded to have the property sold. After issue of the sale notification, one of the judgment-debtors applied for stay of the sale, on the ground that an administration suit

SALE IN EXECUTION OF DECREE —continued.

4. STAY OF SALE—concluded.

was pending with respect to the property of his father, the mortgagor, and also asked that a receiver be appointed and arrangements made for paying off the mortgage-debt and saving the property from sale. *Held* that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a secured creditor should be debarred from enforcing his security pending the administration suit. *KRISTOMOHIY DOSSEE v. BAMA CHURN NAG CHOWDEY*

[I. L. R., 7 Calc., 733 : 9 C. L. R., 344]

7. ———— Tender of debt by transferee of property—*Civil Procedure Code, s. 291*.—*Held* that the assignees of a purchaser from a judgment-debtor of property, the subject-matter of a decree for enforcement of hypothecation, were entitled to come in and protect the property from sale in execution of the decree by tendering the debt and costs under s. 291 of the Civil Procedure Code, and that the executing Court was bound to accept the money and stop the sale. *BEHARI LAL v. GANPAT*

[I. L. R., 10 All., 1]

8. ———— Civil Procedure Code, ss. 276, 305.—S. 305 of the Civil Procedure Code (which enables the Court in certain cases to stay the sale of immoveable property to enable the debtor to raise the amount of the decree by mortgage, lease, or private sale of the property) contemplates a mortgage or lease or private sale only where "the amount of the decree can be thus provided for. A Court executing a decree can neither grant a certificate under this section, nor confirm a mortgage or other alienation of property, unless it appears that by such alienation the decree will be satisfied in full. It is not sufficient that after grant of certificate a mortgage by the judgment-debtor is, as between him and his mortgagee, *bona fide*, nor can it affect the lien acquired by the judgment-creditor under s. 276. *GURUSAMI v. VENKATSAMI*. I. L. R., 14 Mad., 277

5. IMMOVEABLE PROPERTY.

9. ———— Interest in decree against mortgaged property—*Civil Procedure Code, 1859, s. 259—Sale of decree—Interest in immoveable property*.—A decree for the sale of mortgaged property was attached and sold in execution of a decree. *Held* that the interest in immoveable property thereunder conveyed to the purchaser was immoveable property within the meaning of s. 259 of Act VIII of 1859, and that certificate of sale ought to have been granted to the purchaser. *HARI GOVIND JOSHI v. RAMCHANDRA PANDURANG JOSHI*

[9 Bom., 64]

10. ———— Decree creating charge on land—*Interest in immoveable property*.—The sale of a decree charging land for its satisfaction in the course of execution-proceedings against the judgment-creditor is a sale of an interest in immoveable property. *Held* that the provisions of the Code of Civil Procedure relating to sales of immoveable

SALE IN EXECUTION OF DECREE

—continued

5 IMMOVEABLE PROPERTY—concluded

property will apply to such sale BHAWANI KUAR
v GHULAB RAI I L R, 1 All, 348

MOBKOONISSA v DEWAN ALI MISTREE
[4 W R, Mis, 22]

6 BIDDERS

11 ———— Withdrawal of bid—Civil
Procedure Code s 290—It is competent to a bidder
at a Court auction sale to withdraw his bid AGRA
BANK v HAMLIN I L R, 14 Mad, 235

7 PURCHASERS RIGHTS OF

(a) GENERALLY

See CASES UNDER ACCRETION—RIGHT OF
PURCHASERS TO ACCRETIONS

12 ———— What passes by sale—Sale
under money decree—Right title and interest of
judgment debtor.—Nothing passes to the auction
purchaser at a sale in execution of a money decree
but the right title and interest of the judgment
debtor at the time of the sale AKHS RAM v NAND
KISHORE I L R, 1 All, 236

KHUR CHAND v KALIAN DAS
[I L R, 1 All, 240]

BARTON v BRUNNATH SURMAH 3 W R, 65

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[6 W R, 223]

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[2 Agra, 125]

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[3 Agra, 168]

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BHUKAN BHAIKAYA v BHAIJI PRAS 1 Bom, 19

13 ———— Sale under Bom
Reg IV of 1827—Right title and interest of judg-
ment debtor.—All that passed under a Court's sale
under Bombay Regulation IV of 1827 was the right
title and interest of the judgment debtor whose
property was proclaimed for sale KUSHABA BIN
SANKHOJI v PITAMBARDHARI 12 Bom, 15

14 ———— Property sold
with specification—Rights of judgment debtor—

that a Court in sale and is conveyed there
appearing no provisions in the Procedure Code to
contemplate the sale or transfer of anything more
than the right and interest of the judgment debtor,
and if the auction purchaser at a sale in execution
acquires by the express terms of the conveyance to
him, not the presumed title of the person in posses-
sion or the apparent title in the Collector's books.

SALE IN EXECUTION OF DECREE

—contd

7 PURCHASERS RIGHTS OF—continued

but the right title and interest of the judgment
debtor in the property sold MAHOMED BUKSH v
MAHOMED HOSSEIN

[3 Agra, 171 Agra, F B, Ed 1874, 145]

See HALUK DOSS v NIMATE CHUNDER SIRCAR
[17 W R, 511]

15 ———— Description of
property in specification under s 237 of Civil Pro-
cedure Code on application for attachment—Exe-
cution against joint family property—The speci-
fication required by s 237 of the Civil Procedure

hold unless something to the contrary appeared
that the sale was of that share and interest only
MUHAMMAD HUSAIN v DIP CHAND
[I L R, 14 All, 190]

16 ———— Sale of rights
and interests in mouzah consisting of two mehalas—
Submersion of mehal at time of sale—Sale certi-
ficate not specifically mentioning submerged mehal
—Passing of rights in submerged mehal to pur-
chaser—The rights and interests of certain judgment
debtors in a mouzah consisting of two separate mehalas
respectively known as the Uparwar mehal and the

necessary and contingent right to any lands which

No 818 of 1865 referred to Fida Husain v Kutab

SALE IN EXECUTION OF DECREE —continued.

7. PURCHASERS, RIGHTS OF—continued.

Husain, I. L. R., 7 All., 38, dissented from. **MUHAMMAD ABDUL KADIR v. KUTUB HUSAIN. KUMAL-UD-DIN AHMAD v. KUTUB HUSAIN**

[I. L. R., 9 All., 136]

17. ————— *Increase of judgment-debtor's interest occurring after attachment and before sale.*—Previously to a mortgage of it, a fractional interest in certain property (which interest was purchased by the plaintiff, the mortgagee at a judicial sale) had been the subject of a settlement by a Mahomedan on his wife under the conditions that, if he should have no child by her, his two sons by another wife should each have an estate therein. He died without other children. *Held* that the two sons had taken definite interests capable of being attached within s. 266 of the Civil Procedure Code, not being mere expectancies. *Held* that a judicial sale of property, purporting to be of all the interest of a judgment-debtor, carries with it any enlargement thereof that may have occurred after the attachment and before the sale; and that accordingly the above-mentioned settlor having died without a child by that wife, between the date of the attachment and the sale, the sons' augmented interests passed thereby. **UMES CHUNDER SINGAR v. ZAHUR FATIMA** . . . I. L. R., 18 Calc., 184

[L. R., 17 I. A., 201]

18. ————— *Civil Procedure Code (Act XIV of 1882), s. 274, cl. (c)—Rights of purchaser of mortgage-bond at sale in execution of decree.*—Where a person at an execution-sale purchases a mortgage-bond under which certain immoveable property is given as collateral security for an advance, the fact that he has not attached under s. 274 of the Code will not affect his right to have the collateral security enforced by the sale of the properties mortgaged. **KASINATH DAS v. SADASIV PATNAIK** . . . I. L. R., 20 Calc., 805

19. ————— *Sale of raiyat's interest—Want of zamindar's consent to alienate.*—An auction-purchaser of a raiyat's right and interest in his house in a village could not acquire more title than could have been transferred by private sale, and therefore if by the village custom the raiyat cannot alienate the house with the zamindar's consent, and such consent has not been obtained, the sale in execution conveys no rights in it to the purchaser. **SHIB LALL v. LOOHUN SINGH** . 3 Agra, Rev., 7

20. ————— *Sale of specified share—Property coming to debtor before sale.*—When there was a sale of a specified share belonging to the judgment-debtor, *Held* that the auction-purchaser was not entitled to claim property which had before sale descended to the judgment-debtor. **AZADEE v. AJMERE KOONWER** . . 1 Agra, 282

21. ————— *Interest in purchase-money—Civil Procedure Code, 1877, s. 266—Property not subject to attachment and sale.*—The purchaser at a sale in execution of a decree of the right or interest which the vendor of immoveable

SALE IN EXECUTION OF DECREE —continued.

7. PURCHASERS, RIGHTS OF—continued.

property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, takes nothing by his purchase, such interest not being subject to attachment and sale under s. 266, Civil Procedure Code, 1877. **AHMAD-UDDIN KHAN v. MAJLIS RAI** I. L. R., 3 All., 12

22. ————— *Right to mesne profits—Civil Procedure Code (Act VIII of 1859), s. 259—Certificate of sale.*—The possession, with mesne profits, of land comprised in a zur-i-peshgi lease of the year 1851 was decreed to the zur-i-peshgidars in 1860; and litigation as to their rights under the lease was carried on till 1874, when, after their deaths, it ended in favour of their representatives. In 1869 one of the parties to that litigation obtained a decree for money against the zur-i-peshgidars; and in 1874, in execution of this decree, all the right, title, and interest of the representatives of the latter in the lease of 1851 was sold to a third party. *Held* (reversing the decision of the High Court) that the right to the mesne profits awarded by the decree of 1860 did not pass by the sale, but remained in the representatives. **GANESH LALL TEWARI v. SHAM-NABAIN** . . . I. L. R., 6 Calc., 218

23. ————— *Life-interest in property of testator.*—A life-interest in the residue of the real and personal property of a testator, after all the charges upon it have been satisfied and provided for, and after a full administration has taken place of the assets for the purpose of discharging these several dispositions, cannot be sold under an execution issued in the Supreme Court against the property of the testator. The sale therefore passes nothing to the purchaser. **TOKAI SHEROR v. DAUD MULLICK FUREEDOON BEGLAR**

[4 W. R., P. C., 87: 6 Moore's I. A., 510]

24. ————— *Sale of legacy under writ against executor.*—A seizure and sale by the Sheriff of the amount of a legacy under a writ against the executor, declared invalid in the absence of proof of payment extinguishing the legatee's interest. **LAZAR v. COLLA RAGAVA CHETTY**

[5 W. R., P. C., 126: 2 Moore's I. A., 83]

25. ————— *Right and interest of proprietor of resumed revenue-paying estate.*—By a sale in execution of the rights and interests of a judgment-debtor as recorded proprietor of a Government resumed revenue-paying estate, released rent-free lands lying in the estate do not pass to the purchaser. **DOL GOBIADMONY DEBIA v. IMDAD ALI** . . . 5 W. R., 170

26. ————— *"Right, title, and interest" of a judgment-debtor in a partly-executed decree—Possession of land attached under Beng. Reg. V of 1812, s. 26.*—A decree of the year 1843 awarded to persons, afterwards represented by the respondents, the possession of a moiety of a talukh which had been since 1837, and remained till 1866, under attachment by the Collector in virtue of an order made under Regulation V of 1812. The Court

SALE IN EXECUTION OF DECREE

—continued.

7 PURCHASERS, RIGHTS OF—continued.

which granted the decree, intending to execute it approved the proceedings of an Ameen purporting to put the decree-holders into constructive possession of a certain number of mouzahs of the talukh. In 1850 the appellants, in execution of a decree for money obtained by them against the respondents, purchased at a sale, amongst other things, their "right, title, and interest" in the decree of 1843. *Held* (affirm-

decree of 1843 had been so far executed, and that what was acquired by the appellants at the execution sale was only the unexecuted portion of the decree of 1843. *GRISHCHUNDER CHUCKERBUTTY v JIRANESWARI DABIA GRISHCHUNDER CHUCKERBUTTY v BISSESWARI DEBIA*

[I. L. R., 6 Calc., 243; 7 C. L. R., 420]

27. — *Sale of right, title, and interest of zamindar—Impartible primogenitary zamindari—Interest taken by purchaser*—In 1878 and 1876, portions of an impartible primogenitary zamindari, which were in the possession of a lessee from the zamindar, were attached and brought to sale in execution of decrees against the zamindar. The purchase money was very inadequate as the price of the full ownership of the property (subject to the lease), but what was sold according

28. — *Sale of rights of deceased debtor whose representatives hold certifi-*

does not acquire the entire estate, but acquires it subject to all legal and equitable rights of inheritance. *SHAM COOMAR ROY v JUTUN BIBEK*

[14 W. R., 448]

RAJKRISTO SINGH v. BUNGSHEE MORUN

[14 W. R., 448 note]

29. — *Sale of zamindari rights—Building appurtenant to zamindari rights*—The "rights and interests" of a zamindar in a certain village were sold in execution of a decree. At the time of the sale a certain building was his property and zamindar. *Held* that, in the absence of

SALE IN EXECUTION OF DECREE

—continued.

7. PURCHASERS, RIGHTS OF—continued.

30. — *Sale of house and lands to different purchasers—Decree-holder, Purchase of land by, and sale of house to, third person*—Where a decree holder who had attached certain land and a house upon it caused the land to be sold in execution and purchased it, and then caused the house to be sold to a third party,—*Held* that he had purchased the land on which the house stood, subject to the right of the person who bought the house to have it continued there. *MOOKTA HOONDURE CHOWDHRAI v MUTHOORANATH GHOSH*

22 W. R., 209

31. — *Sale of property with encumbrances—Right, title, and interest of debtor*—The purchaser at a Court's sale buys only the right, title, and interest of the debtor, burdened with all valid liens such as a previous mortgage. *Mathuradas Ranchoddas v Kalia Khushal, 7 Bom., A. C., 23, and Chintaman Bhaskar v. Shriram Hari, 9 Bom., 804, followed RANCHODDAS DATALDAS v. RANCHODDAS NANABHAI*

[I. L. R., 1 Bom., 581]

32. — *Interest adverse to judgment-debtor—Effect of sale—Incumbrances by debtor after attachment*—Under an execution sale, the purchaser, notwithstanding that he acquires merely the right, title, and interest of the judgment-debtor, acquires that title, by operation of law, adversely to the judgment-debtor, and freed from all the alienations and incumbrances effected by him after the attachment of the property sold. *DINENDRONATH SANNIAL v RAMKUMAR GHOSH TABAKCHANDRA BHUTTACHARJEE v BAIKANTNATH SANNIAL*. I. L. R., 7 Calc., 107; 10 C. L. R., 281

[L. R., 8 I. A., 65]

BRUGOBAL CHUNDER DOSS v LALLA THAKOOR PERBHAD

W. R., 1884, 359

33. — *Sale free of decree holder's interest—Reservation of rights*—

44 W. R., 200

See DULAB SIKKAR v KRISHNA KUMAR BAKSH

[3 B. L. R., 407; 12 W. R., 303]

34. — *Prior right of former purchaser at unconfirmed sale—Laches*—The purchaser at a Court's sale buys only the then existing right, title, and interest of the judgment-debtor, and therefore ordinarily takes, subject to the

laches on the part of the first purchaser, or by other special circumstances. *KONAPA BIN MAHADAPA v JANARDAN SIKHDEV*

11 Bom., 193

SALE IN EXECUTION OF DECREE

—continued.

7. PURCHASERS, RIGHTS OF—continued.

35. ———— *Effect of sale—Right of purchaser as compared with purchaser by private sale—Right as against charges on estate sold.*—A purchaser at a judicial sale is in a position different from that of a mere representative of the old proprietor, or of one who comes in by a voluntary sale made by the latter. A judicial sale transfers to the purchaser the property of the judgment-debtor against the debtor's will, and places the purchaser in a higher position than that which the judgment-debtor, by any private alienation, could confer on him. Such a purchaser is competent to defend his possession and title by showing that the charge which it is sought to establish against the estate is fraudulent and collusive, and therefore void. *OOMRAO SINGH v. SHIMBOO NATH* 2 N. W., 38

36. ———— *Purchase subject to decree for sale—Incumbrance.*—A decree-holder having attached certain property in the execution of a decree, *R* appeared as an objector. The decree-holder was referred to a civil suit, and obtained a decree for the sale of the property in satisfaction of the former judgment-debt. *A* then sued the judgment-debtor for the return of certain alleged consideration-money and obtained a decree, in execution of which he brought to sale and became purchaser of the same property of which the sale had been decreed as above mentioned. *Held* that *N* could only purchase the property subject to the decree for sale, and that the transactions subsequent to that decree had no effect to shake it off. *NIRUNJUN RAI v. RUJJO RAI* 5 N. W., 166

See *SOORAJ BUKSH v. RAMJERAWUN*
[4 N. W., 5

37. ———— *Fraudulent alienations before decree.*—An auction-purchaser can question the fraudulent acts and alienations of the old proprietor in fraud of the decree. *BAIOHOO v. HOWARD* 3 Agra, 15

DEWAN ROY v. RIDDELL 9 W. R., 521

38. ———— *Fraudulent award, Right of purchaser to contradict.*—The *locum tenens* of a purchaser at a sale in execution of a decree is not bound by an award in fraud of the decree to which the judgment-debtors were parties. *ALFATUN v. RAO KARAN SINGH* 7 N. W., 362

39. ———— *Right of purchaser to set aside deeds.*—There is no authority for the proposition that the purchaser at a sale in execution of a decree of the right, title, and interest of the judgment-debtor acquires by that purchase not merely the right, title, and interest of the judgment-debtor, but any right which the judgment-creditor might have to set aside or question the validity of any deed which had been previously made, even it might be by the judgment-debtor himself. *LALLA RAM SURUN LALL v. LOKEBAS KOORER*
[18 W. R., 39

40. ———— *Right to set aside patni—Mortgage—Covenant not to alienate.*—*A*

SALE IN EXECUTION OF DECREE

—continued.

7. PURCHASERS, RIGHTS OF—continued.

gave a mortgage to *B* of certain property as a security for money lent, and covenanted not to alienate the property by gift, *ijara*, *patni*, or otherwise, by which loss might be caused to the existing actual assets of the property. *A* subsequently granted a *patni* to *C*. *B* obtained a decree against *A* for the amount of the loan, and the property was sold in default of payment. *D* was the purchaser at the auction-sale. *Held* that *D* could maintain his suit against *C* to set aside the *patni* and for possession. *BRAJARAJ KISORI DASI v. MOHAMMED SALEM* 1 B. L. R., A. C., 152

S. C. BROJO KISHOREE DOSSIA v. MAHOMED SULEEM 10 W. R., 151

(b) EASEMENTS.

41. ———— *Right to easements.*—The rule that the right to easements goes with the property when sold by the owner himself, applies also when the property is sold by the Court in execution of a decree against him. *HUREE MADHUB LAHIREE v. HEM CHUNDER GOSSAMEE* 22 W. R., 522

(c) EMBLEMENTS.

42. ———— *Right to emblements—Mortgage, Sale under.*—On the 14th of July 1876, *B* obtained a decree against *D* directing *D* to pay the amount advanced upon a mortgage of *D*'s lands within six months from the date of decree, or, in default of payment, the lands to be sold with liberty to *B* to bid at the sale. Default having been made, the lands were sold on the 21st of June 1877, and *B* became the purchaser. At the time of the sale the lands were in the occupation of *D*'s tenants under an agreement to give to *D* a moiety of the crops. On the 11th December 1877 *P*, another judgment-creditor of *D*, attached the crops on those lands which had been cut and stored by *D*'s tenants since the date of the sale. *Held* that by the sale to *B* all right, title, and interest of *D*, including his right to the moiety of the crops in the hands of his tenants, passed to *B*, and no residual right remained in *D* on which *P*'s execution could operate, the crops not having been actually carried away and appropriated by *D*. *LAND MORTGAGE BANK OF INDIA v. VISHNU GOVIND PATANKAR* I. L. R., 2 Bom., 670

43. ———— *Crop standing on land sold in execution of a decree obtained by a mortgagee in possession.*—A mortgagee in possession sued on his mortgage, and having obtained a decree brought the land to sale in execution: and the execution-purchaser was placed in possession. *Held* the mortgagee was not entitled to recover from the execution-purchaser the value of the then standing crop. *RAMALINGA v. SAMIAPPA* I. L. R., 13 Mad., 15

(d) RENT.

44. ———— *Right to rents—Rents paid for former proprietor after sale—Notice of title*

SALE IN EXECUTION OF DECREE

—continued

7. PURCHASERS, RIGHTS OF—continued

of purchaser—The purchaser of a zamindari sold in execution of a decree is entitled to all the rents accruing due from the date of his purchase, and if the tenants or raiyats, after having had notice of his title, choose to continue to pay their rents to, or for the use of, the former proprietor, they do so at their peril, and cannot plead such payments in answer to a suit for rent by the new owner. COLLECTOR OF RAJSHAHY v. HURSOONDERY DEBIA

[W. R., 1864, Act X, 6]

45. — Apportionment of rents—

Purchaser of share of estate—A purchase at a sale in execution of a decree of one of several estates let in one patni is not bound by any agreement between the patnidar and other zamindars regarding their shares of the entire patni rent. Nor can he claim from the patnidar as his own share of the patni rent a sum bearing the same proportion to the whole patni rent as the sudder jumma bears to the sudder jumma of all the estates let out in patni. In order to obtain redress in such a case either the patnidar or one or all of the zamindars may have their fixed patni rent properly apportioned among the several zamindars by a civil suit in which all the zamindars should be parties. FORESH NATH ROY v. BISHROOP DUTT

[W. R., 1864, Act X, 16]

(e) REVERSIONARY INTEREST

46. — Reversionary right of

grantor—Property liable to attachment and sale—Grant to Hindu widow for maintenance for life—Act VIII of 1859, s. 205—Civil Procedure Code, s. 266 (k)—One N, the sold owner of a certain

By his first wife was G, by K, the defen-

U his son, G his widow, and K his son's widow, and on his death U inherited the village. Prior to the year 1874, U had made a gift to G of 105 bighas situate in the village. In 1874 the rights and interests of U

the gift and for possession of the land. The learned Judge found that the land was given to G in lieu of

at the time of the sale of the village by auction was in the nature of a mere expectancy and therefore could not be sold and was not sold. Held that U gave to G the usufruct of the land for her life in lieu of her maintenance, that after the gift the interest of U in the land was of the same character and carried with it the same consequences as the

SALE IN EXECUTION OF DECREE

—continued

7 PURCHASERS, RIGHTS OF—concluded.

reversion, which the lessor would have for land leased for life or years and analogous to the right which a

Koonwar v. Komul Koonwar, 6 W. R., 34, Ram Chander Tamra Das v. Dharmo Nuran Chukarbatty, 7 B. L. R., 341 15 W. R., F. B., 17, Tuffazool Hussain Khan v. Raghunath Pershad, 7 B. L. R., 186 1d Moore's I. A., 40, distinguished. MACHWAIR v. SARUP CHAND

[I. L. R., 10 All., 462]

(f) STRIDHAN

47. — Malabar Law—Personal decree against karnavan—Civil Procedure Code, s. 835—A sued for possession of certain shops belonging to a Malabar tarwad, which had been attached in execution of a personal decree passed against a karnavan in a suit for a private debt. In the execution proceedings, an objection petition was put in, stating that the shops were stridhanam and was rejected, and the order of rejection was not appealed against for one year. Respondents Nos 1 to 4, the husbands of the persons who put in the objection petition, were

8 ERRORS IN DESCRIPTION OF PROPERTY SOLD

48. — Subject of purchase—Certificate of sale, Description in—Obligation of purchaser to see that certificate is correct—It is the business of an auction purchaser to see that the sale certificate conveys to him what he supposes himself to have purchased, and it is not open to him to adduce evidence afterwards to prove that he purchased anything more than the certificate shows him to have taken under the sale. PEAREE MOHUN MOOKERJEE v. GOSTO BEHARY DUTY 26 W. R., 104

49. — Certificate of sale more extensive than decree—Right of purchaser.—Where a decree holder obtains an order for the sale

50. — Subject of sale—Discrepancy between notification of sale and sale certificate—Right of purchaser—Where on an execution sale there is a discrepancy between the conditions in the notification of what is to be sold and the certificate of what has been sold, the conditions in the notification are to be taken as of superior authority in

SALE IN EXECUTION OF DECREE

—continued.

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD—continued.

dealing with the conflicting claims of innocent third parties whose rights are affected by the variation. In execution of a decree for arrears of rent, an application was made for a sale of the tenure for the arrears of which the decree had been obtained. A notification was issued purporting to be a sale proclamation under Act VIII of 1859, s. 249, and in pursuance of that notification the sale of the right, title, and interest of the judgment-debtor took place. *Held* that the tenure did not pass by that sale, notwithstanding that the sale certificate stated it was the tenure itself which had been sold. **UMA CHURN SEN v. GOBIND CHUNDER MOZUMDAR**

[1 C. L. R., 460]

51. — Misdescription of

tenure sold—Right of purchaser.—*A*, in satisfaction of a decree against *B*, caused the sale of a tenure, styling it a jote-jumma. *C*, the superior zamindar, purchased the tenure as such for ₹900; but failing to pay the balance of the purchase-money, the tenure with the same description was re-sold, and purchased by *C* for one rupee. *A*, on discovering his mistake in having advertised the property as a jote-jumma, when in fact it was a shamilat talukh (a more permanent and valuable holding), caused a sale of *B*'s rights and interests in the shamilat talukh, and, having purchased them himself, was put into possession. *A* then sued for rent under Act X of 1859, when *C* intervened as in enjoyment of the rent, and *A*'s suit was dismissed. In a suit by *A* to establish his right to the shamilat talukh,—*Held* that *A* was entitled to succeed, as he had acted *bond fide*, and that *C* could not be considered an innocent purchaser for a valuable consideration, but a purely speculative purchaser, as he must have known that no such tenure as that which he purchased under the denomination of jote-jumma had any real existence. **HURO NATH ROY v. MOTHOOBA NATH ACHARJEE**

[7 W. R., 4]

52. — Description in

notification of sale—Sale under mortgage-decree—Vendor and purchaser.—The proprietors of a talukh and mehal called *B*, assessed with revenue at ₹6,800-4-7, to which certain lands which had been gained by alluvion appertained, which lands had been formed into a separate mehal and assessed with revenue at ₹88, mortgaged it in these terms: "We agree mutually to mortgage the said talukh *B*, and accordingly after mortgaging and hypothecating the whole of the mouzabs original and appended, yielding a jumma of ₹6,800-4-7, along with all original and appended rights, water and forest produce, high and low lands, cultivated and uncultivated lands, etc., etc., and all and every portion of our proprietary, possessory, and demandable rights, without excepting any right or interest obtained or obtainable, etc." Subsequently, the mehal talukh *B*, "together with original and attached mehal and all the zamindari rights appertaining thereto," was sold in the execution of a decree enforcing the mortgage. The auction-purchaser subsequently contracted to sell the "entire talukh *B*,

SALE IN EXECUTION OF DECREE

—continued.

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD—concluded.

jumma ₹6,800-4-7," but afterwards refused to perform the contract, and was sued for its specific performance. The plaint in this suit stated that the subject-matter of the contract was the "entire talukh *B*, jumma ₹6,800-4-7," and the decree which the purchaser obtained for the specific performance of the contract referred to its subject-matter in similar terms. *Held* in a suit by the purchasers for the possession of the alluvial mehal, that the terms of the mortgage were sufficiently comprehensive to include that mehal, and it was not intended by the entry of the jumma of mehal *B*, exclusive of the jumma of the alluvial mehal, to exclude the latter from the mortgage, the entry of the jumma being merely descriptive. Also that the alluvial mehal passed to the auction-purchaser at the auction-sale, under the words "attached mehal." Also that the sale to the plaintiffs passed the alluvial mehal, the words "the entire talukh *B*" being sufficient to include it, the entry of the jumma of mehal *B* in the sale contract, plaint, and decree being merely descriptive. **GANPATJI v. SAADAT ALI**

[I. L. R., 2 All., 787]

9. JOINT PROPERTY.

53. — Sale of joint property as if separate—*Effect of sale—Right taken by purchaser.*—Under a sale in execution of a decree no property can be sold except that which belongs to the defendants in the suit. Accordingly, if under a decree in a suit against *A* alone, for a debt for which *B* is jointly liable, an estate be sold in which *B* is entitled to an equal share with *A*, the interest of *A* alone is acquired by the purchaser. **KISHEN CHUNDER GHOSE v. ASHOORUN** . . . **Marsh., 647**

SREEPERSHAD SUREMAH BHUTTACHARJEE v. SHUROOPA DOSSIA . . . **9 W. R., 452**

54. — Sole right of member of joint Hindu family in undivided property—*Decree in suit for damages for tort—Costs.*—There may be a valid sale upon an execution in an action of damages for a tort, of the share of undivided family property to which, if a partition took place, a judgment-debtor would be individually entitled. Such damages in the costs recovered constitute a judgment-debt, in respect of which the judgment-creditor's rights are the same as those upon any other judgment for payment of money. **VIRASVAMI GRAMINI v. AYYASVAMI GRAMINI** . . . **1 Mad., 471**

55. — Partnership property—*Sale-decree against one of several partners in mercantile firm—Right against partnership property.*—A suit was brought by *C* against "*A*, as manager of a firm and also against the firm itself;" and a decree was passed accordingly. *A* was one of two partners in the firm. The other partner (*B*) was not named in the plaint. In execution of the decree, the right, title, and interest of *A* in a stable, which in fact belonged to the firm, was sold to the plaintiff. In a suit brought by the plaintiff against *B*, the other

SALE IN EXECUTION OF DECREE

—continued

9 JOINT PROPERTY—continued

partner in the firm to recover possession of the property—*Held* that the plaintiff was in no better position than a purchaser at a sale of partnership prop-

cerns of the firm and claim that interest in the property which upon a final settlement might be ascertained to belong to his judgment debtor **KALY ANBHAI v MOTIRAM JAMNADAS** 10 Bom 378

See **KESHAV GOPAL GINDE v RAYAPA**

[12 Bom, 165]

58 ——— Property of co parceners—

Share of one of several co parceners—Undivided Hindu family—Uncertain share Purchase of—In the Bombay Presidency the share of one of the co parceners in a Hindu undivided family in the ancestral estate may before partition be seized and sold in execution for the separate debt in his lifetime. The purchaser of such an unascertained share cannot before partition insist on the possession of any particular portion of the undivided family estate and he takes any such share subject to the prior charges or incumbrances affecting the family estate or that particular share. The attachment of a co parceners share in the family property under an ordinary money decree should go against the share right title and interest of the judgment debtor in such parts of the family property (naming and describing them) as the judgment creditor can specify and against the share right title and interest in all other parts of the family property **UDARAM SITARAM v RANU PANDURAJ** 11 Bom, 76

57 ——— Attachment and

sale of the interest of one of several co parceners in the undivided estate—Mortgage by one co parceners—In 1848 two members of an undivided family mortgaged some land forming a portion of the ancestral estate. The mortgagee having obtained a decree in 1856 on his mortgage caused 20 guntas of the mortgaged land to be attached and sold on account of the right and interest of one of the mortgagors only on 24th January 1871. In a suit brought by the purchaser against a third member of the un-

1848 **PANDURANG ANANDRAO v BHASKAR SHADASHIV** 11 Bom, 72

58 ——— Property of joint tenants—

Share in joint family property—Family dwelling house—Service rents—Right of purchaser—Where the interest of one of several joint tenants in a family

SALE IN EXECUTION OF DECREE

—continued

9 JOINT PROPERTY—continued

dwelling house and in certain lands let out on service tenure is sold in execution the purchaser is entitled to joint possession of the dwelling house with the other shareholders and also to a right to share in the service rents **Komar Bhoj Keshal Roy v Samasundari B L R Sup Vol 172 2 W R, Mts 30**, commented on **RAJANIKANTH BISWAS v RAM NATH NEOGY** I L R, 10 Cal 244

See **ESHAN CHUNDER BANERJEE v NUND COOMAR BANERJEE** 8 W R, 239

59 ——— Property of joint tenure holders—*Decree against one of several joint sharers—Effect of sale under such decree*—In execution of a decree against one of several joint holders of a tenure when it is clear that what is sold and intended to be sold is the interest of the judgment-

appears that the judgment debtor has been sued as representing the ownership of the whole tenure and

and not to the form or language of the proceedings **JEO LAL SINGH v GUNGA PERSHAD** [I L R, 10 Cal, 998]

See **NITAYI BEHARI SARKA PARAMANICK v HARI GOVINDA SAHA** I L R, 28 Cal, 677 and **ANUNDA KUMAR NASKAR v HARI DASS HALDAR** I L R, 27 Cal, 545

60 ——— Property of joint family—*Suit to set aside sale—Refund of purchase money*—The sale of joint property governed by the Mitak

61 ——— Personal decree against Larnam of farwad—*Right of purchaser*

issue bond *jude* and for value is not material **EGAYACHANDATHIL KOMBACHEN v KENATUNKORA LAKSHMI ANNA** I L R, 5 Mad, 201

SALE IN EXECUTION OF DECREE —continued.

9. JOINT PROPERTY—continued.

62. ————— *Right of minor brother—Sale advertisement under decree against entire property*—A minor brother's share in a joint family estate was held not liable under a sale advertisement which referred solely to the rights and interests of his elder brothers who did not represent him, though the decree was against the entire property. *RAM LOCHUN SHAHA v. UNNO POORNA DOSSEE* . . . **7 W. R., 144**

NETTE ROY v. ODEET ROY . . . **10 W. R., 241**

63. ————— *Mortgage for legal necessity by managing brother of joint family—Sale in execution of decree obtained against mortgagor alone—Rights of purchaser and other member of joint family.*—A, the managing member of a joint Hindu family governed by the Mitakshara law, for joint family purposes and legal necessity mortgaged the joint family property. The mortgagee subsequently sued A alone upon the mortgage, obtained a decree, and had the property comprised in the mortgage put up for sale. B, a brother of A's, who was no party to the mortgage or to the suit thereon, resisted the purchaser at the auction-sale in his endeavour to get possession. In a suit by the purchaser against B and A,—*Held* that B's interest in the joint family property was unaffected by the decree passed in the mortgage suit, and that the purchaser was not entitled to the relief he sought as regards his share. *Subramaniyayan v. Subramaniyayan*, **I. L. R., 5 Mad., 125**, followed *ABIRAK ROY v. RUBBI ROY* . . . **I. L. R., 11 Calc., 293**

64. ————— *Purchase by decree-holder of family property in execution of decree against member of joint family—Effect of sale—Right of purchaser.*—The property of an undivided Hindu family consisting of brothers having been hypothecated by one brother was sold in execution of a decree obtained against him alone upon the hypothecation bond and purchased by the decree-holder. *Held*, in a suit by another brother to recover his share of the property sold, that the purchaser was only entitled to the interest of the judgment-debtor in the property sold, and could not be permitted to prove that the debt for which the property was sold was contracted for family purposes by the manager of the family. *ARMUGAM v. SABAPATHI*
[I. L. R., 5 Mad., 12]

65. ————— In an undivided Hindu family consisting of two brothers, the elder, while managing the property during the minority of the younger, executed a mortgage of family property in renewal of a former mortgage, executed by his deceased father as security for moneys lent for purposes neither immoral nor illegal. The mortgagee, having sued the elder brother upon this mortgage, brought to sale and purchased the property mortgaged. The younger having brought a suit for partition against the elder brother and the alienee of the mortgagee and purchaser at the Court sale,—*Held* (*TURNER, C.J.*, and *KENAN, J.*, dissenting) that the

SALE IN EXECUTION OF DECREE —continued.

9. JOINT PROPERTY—continued.

plaintiff was entitled to recover his share of the property without paying his share of the mortgage debt, and that it was immaterial whether or not the mortgage was executed to discharge a prior mortgage debt of the father. *SUBRAMANIYAYAN v. SUBRAMANIYAYAN* . . . **I. L. R., 5 Mad., 125**

66. ————— *Execution of decree against one brother—Rights of other brothers.*—J purchased a 10 biswas share in a village, and Y purchased a village, both of which properties were, at the time they were respectively purchased, mortgaged to secure one debt. J died leaving four sons. After J's death, Y, whose village had been sold in execution of a decree for the sale of the mortgaged property, sued R, eldest son of J, for rateable contribution in respect of the debt secured by the mortgage, and he obtained a decree for Rs210 and costs, and directing the 10 biswas share to be sold in satisfaction of the decretal amount. Upon attachment of the share in execution of the decree, the three younger sons of J claimed 7½ biswas as belonging to them, and prayed that the same might be released from attachment. This objection was disallowed as made too late, and the sale in execution of the decree took place. The sale certificate showed that the property sold was "the rights and interests" of R in the 10 biswas. The three younger sons of J subsequently brought a suit to establish their right to 7½ biswas out of the 10 and to set aside the sale to that extent. *Held* that the shares of the plaintiffs were unaffected by the sale, and all that passed thereunder to the purchaser was the 2½ biswas share of the judgment-debtor. The plaintiffs were not bound by the decree in a suit to which they were not parties, and by a sale to which they objected, and in the teeth of the terms of the sale certificate put forward to defeat them. *SUNDAR LAL v. YAKUB ALI* . . . **I. L. R., 6 All., 362**

67. ————— *Property of Hindu judgment-debtor—Right of purchaser.*—*Held* that the property in the hands of a Hindu judgment-debtor was liable to sale in the same way and to the same extent as would the other immoveable property of a Hindu having sons be liable; and that the question of the extent of the right to be sold should have been left an open question for adjudication in a suit between purchasers and other persons claiming right therein. *BULDEK SINGH v. DWARKA DASS* . . . **1 Agra, 169**

68. ————— *Sale of ancestral family property in execution of decree against father—Delay in impeaching sale.*—A son's interest may pass on a sale of ancestral property in execution of a money-decree against his father, but whether it does or does not pass will have to be determined by the circumstances of each case. Delay in bringing proceedings to impeach sales is a matter for consideration in determining what interests pass on the sale. *BASO KOER v. HURRY DASS* . . . **I. L. R., 9 Calc., 495; 12 C. L. R., 292**

69. ————— *Son's interest in joint ancestral property—Sale of right, title,*

SALE IN EXECUTION OF DECREE

—continued

9 JOINT PROPERTY—continued

and interest of father—The sale of the right, title, and interest of a father in ancestral property, in execution of a decree for a debt incurred by him, passes as well the right title and interest of the son where the debt was not incurred for an immoral purpose and where the purchaser has inquired whether there was a decree against the father, and that the property was properly liable to process and sale in satisfaction of the decree and has purchased the estate *bond fide* under the execution and *bona fide* paid a valuable consideration for it. In determining whether the sale passed the right title, and interest of the son the nature of the debt and not the nature of the property must be considered. Unless it can be shown that the debt was incurred for an immoral purpose the question as to the nature of the debt must be held to be determined against the son by there having been a decree against the father, and his right title and interest in the family property. **PANDIT HAIT RAM & NULU**

[7 N W, 110]

70 ———— *Right of father*

of joint Hindu Mitakshara family—Suit by sons to set aside sale—In execution of a simple money decree against the father of the plaintiffs who were members of a joint Mitakshara family, the right title, and interest of the judgment debtor in certain joint immovable property was sold in 1873 and the purchasers took possession of the whole property. In 1878 the plaintiffs sued to recover their shares in such property on the ground that only the share of their father had legally passed to the purchasers. *Held* that the plaintiffs were entitled to succeed. **BHAGWAT DASSA & GOVRI KUNWAR**

[7 C L R, 218]

71 ————

Mitakshara law mortgaged a certain mouzah V, portion of the joint family property by a bond containing the following clause "I have pledged"

debtor as set out in the proclamation of sale was sold. *Held* that the mortgagor must be taken to

STUDD & BEIJ NUNDUN PERSHAD SINGH

[9 C L R, 350]

72 ———— *Attachment of*

family property in execution of decree against Hindu father. Sale limited to interest of father on objection by sons—Right acquired by purchaser—In execution of a personal decree obtained against the father of an undivided Hindu family

SALE IN EXECUTION OF DECREE

—continued

9 JOINT PROPERTY—continued

and one of his sons the creditor attached the family estate. The two remaining sons objected by petition, to the attachment of their shares and the Court directed that the sale should be confined to the right title and interest of the judgment debtors. The creditor having purchased at the sale obtained possession of the whole estate. *Held* that the right title and interest of the father purchased by the creditor was only a right to obtain the share of that judgment debtor by partition. **SUBAYAN & RUPPA NAGASAMI ATYAN** I L R., 11 Mad, 155

73. ———— *Money decree*

against father—Attachment of sons' shares—In a suit brought against the father of a Hindu family and his eldest son, on a bond executed by the former, by which family property was hypothecated as security for the repayment of the debt a decree was

against their father—*Held* that so far as the younger sons were concerned the decree for it that could be the father. **WARA & SIKH**

74 ———— *Impartible*

samindari—Money decree against zamindar—Attachment and sale of estate—Suit by son to recover after father's death—Right of purchaser—In execution of a money decree obtained against the holder of an impartible zamindari, the creditor attached certain immovable property—portion of the zamindari which he described as the property of the debtor. This was sold by the Court and purchased by L. A suit having been brought by the son of the judgment-debtor after his father's death to recover the property from L.—*Held* that all that L. acquired was the life interest of the judgment-debtor in the property and therefore the plaintiff was entitled to recover. **SIYAGANGA & LAKSHMANA** [I L R, 9 Mad, 188]

75 ———— *Joint Hindu*

family—Sale of ancestral estate in execution of decree against father—Effect of sale on son's rights and interests—When a decree has been made against the father and manager of a joint Hindu family in reference to a transaction by which he has professed to charge or sell the joint ancestral property, and a sale has taken place in execution of such decree of the joint ancestral property, without

SALE IN EXECUTION OF DECREE —continued.

9. JOINT PROPERTY—continued.

debt incurred for immoral purposes of the kind mentioned by *Yajnavalkya*, Ch. II, s. 48, and *Manu*, Ch. VIII, sloka 159, and one which it would not be their pious duty as sons to discharge. If, however, the decree, from the form of the suit, the character of the debt recovered by it, and its terms, is to be interpreted as a decree against the father alone and personal to himself, and all that is put up and sold thereunder in execution is his right and interest in the joint ancestral estate, then the auction-purchaser acquires no more than that right and interest,—i.e., the right to demand partition to the extent of the father's share. In this last-mentioned case, the co-oparceners can successfully resist any attempt on the part of the auction-purchaser to obtain possession of the whole of the joint ancestral estate, or, if he obtains possession, may maintain a suit for ejectment to the extent of their shares upon the basis of the terms of the decree obtained against the father and the limited nature of the rights passed by the sale thereunder. *Girdharee Lall v. Kantoo Lall*, 14 B. L. R., 187; *Deendyal Lall v. Jugdeep Narain Singh*, I. L. R., 3 Calc., 198; *Suraj Bansi Koer v. Sheo Persad Singh*, I. L. R., 5 Calc., 148; *Bissessor Lall Sahoo v. Luchmessur Singh*, L. R., 6 I. A., 233; *Muttayan Chetti v. Sangili Vira Pandia Chinnatambiar*, I. L. R., 6 Mad., 1; *Hurdi Narain Sahu v. Rooder Perkash Misser*, I. L. R., 10 Calc., 626; *Nanomi Babuasin v. Modun Mohun*, I. L. R., 13 Calc., 21; *Ram Narain Lal v. Bhawani Prasad*, I. L. R., 3 All., 443; *Gaura v. Nanak Chand*, *Weekly Notes*, All., 1883, p. 194; *Weekly Notes*, All., 1884, p. 23; *Appovier v. Rama Subba Aiyar*, 11 Moore's I. A., 75; *Phul Chand v. Man Singh*, I. L. R., 4 All., 309; *Chamaili Kuar v. Ram Prasad*, I. L. R., 2 All., 267; and *Rama Nand Singh v. Gobind Singh*, I. L. R., 5 All., 384, referred to. *BASA MAL v. MAHARAJ SINGH*

[I. L. R., 8 All., 205]

76. ———— *Son's liability for father's debt—Sale of ancestral property—Bond fide purchaser.*—By the sale of ancestral property in execution of a mere money-decree against the father for his separate debt, only the right, title, and interest of the father pass to the purchaser and nothing more, and this holds good whether the purchaser is a stranger or the decree-holder himself. A purchaser at a Court sale cannot set up the title of a bond fide purchaser for value without notice. *Lakshmichand Walchand v. Kastur B-char*, 9 Bom., 60, and *Sobhagchand Golabchand v. Bhaichand*, I. L. R., 6 Bom., 192, followed. *BHIKAJI RAM-CHANDRA OKE v. YASHVANTARAY SHRIPAT KHOPKAR* [I. L. R., 8 Bom., 489]

77. ———— *Mitakshara law—Alienation, voluntary and involuntary, by the members of a family governed by the Mitakshara law.*—A Hindu governed by the Mitakshara law, after the attachment of a property, part of his ancestral estate, to which he and his minor son B were jointly entitled as members of a joint Hindu family,

SALE IN EXECUTION OF DECREE —continued.

9. JOINT PROPERTY—continued.

conveyed by a deed of gift the whole of his interest in the ancestral property, including the property under attachment, to B. Five days after the execution of the deed of gift the property was sold in execution of the decree of the attaching creditor, C, and was purchased by C at such sale. Ten days after the sale, A instituted proceedings, under s. 256 of Act VIII of 1859, to set it aside on the ground of irregularity. These proceedings were afterwards continued in the name of A, but virtually on behalf of the minor B, under the control and direction of the Collector, who had taken charge of his estate, and appointed a manager under Act XL of 1858. These proceedings terminated in 1874 by the application to set aside the sale being dismissed, and the sale was therefore confirmed, and C took possession of the property. In 1877 a suit was instituted on behalf of B, by the manager appointed by the Collector, against C and A to recover possession of the property, on the ground (1) that when it was sold it was not the property of A, the judgment-debtor; and (2) that the property of a joint Hindu family could not be sold or alienated by, or taken in execution of, a decree against a single member of that family. *Held* (1) that the fact that the plaintiff, through his guardian, had actively intervened in the proceedings under s. 256 of Act VIII of 1859, was no bar to the institution of the present suit on his behalf; (2) that C at the sale purchased the interest, whatever it was, of A only, and was entitled to have it ascertained and allotted to him on partition; and (3) that although under the Mitakshara law a member of joint family cannot, or may not, be able to alienate his share or interest in the joint family estate, yet such share or interest can be taken in execution and sold by the holder of a decree against him. *COLLECTOR OF MONGHYR v. HURDAI NARAIN SHAHAI*. I. L. R., 5 Calc., 425; 5 C. L. R., 112

78. ———— *Civil Procedure Code (Act VIII of 1859), s. 264—Execution of decree against a member of an undivided family by sale of his personal interest in the family estate, which was an impartible zamindari; such interest, by reason of his death before the sale, consisting only of the rents and profits then uncollected.*—On a sale of the right, title, and interest in an impartible zamindari, in execution of decrees against the zamindar, the head of an undivided family, the question was whether (a) only his own personal interest, (b) the whole title to the zamindari, including the interest of a son and successor, passed to the purchaser. The proclamation of sale purported to relate to (a) only; and between the dates of proclamation and the auction-sale the zamindar died. On the argument that, this having given rise to an ambiguity, the Court must be understood to have sold all that it could sell, and that, under the circumstances, it could sell, and was bound to sell (b); because the debts, the subject of the decrees under execution, not having been incurred by the late zamindar for any immoral purpose, the entire zamindari formed assets for their payment in the hands of his son,—*Held*

SALE IN EXECUTION OF DECREE

—continued

9 JOINT PROPERTY—continued

that the question of what the Court could or should have sold had not arisen. All that required decision was what the Court had sold. If (a) only was put up for sale, then that interest only could have been purchased. The Courts having concurred in finding that (a) only was sold, in which also their Lordships agreed, only that interest passed to the purchaser. **PETTACHI CHETTIAR v SANGHAI VIRA PANDIA CHINNAVAMBIAIR**. **I L R, 10 Mad, 241**
[L R, 14 I A, 84]

78. ————— *Purchaser at a sale in execution of a decree directing sale of the whole right, title, and interest of grandfather—Assignment by grandson of the same property subsequently to such sale, Effect of—* In 1858 S mortgaged certain ancestral property to the first defendant for a term of nine years. In 1864, S being then dead, the defendant sued R, the son of S, to recover the money debt, and obtained a decree against the estate of the deceased. The land in question was thereupon attached and sold on the 18th August 1878, subject to defendant's mortgage, and was purchased for the defendant by his cousin. The certificate of sale was drawn up in accordance with the decree, and recited that the purchaser bought the whole right, title, and interest of S. On the 3rd August 1882 the plaintiff purchased from R's sons the share of R in S's estate. The plaintiff sued the defendant to redeem the property. The Court of first instance rejected his claim. On appeal, the lower Appellate Court reversed that decree, and remanded the case for re-trial. Against this order of remand, the defendant appealed to the High Court. *Held*, restoring the decree of the Court of first instance, that the language of the decree showed that the intention was to make the land itself liable for the debt, and not merely S's interest. By his purchase the defendant was to be regarded as having bargained for, and purchased the entire interest in, the land. **Nan mi Babunara v Alodhun Hohnu, I L R, 13 Calo, 21**, followed. **SAKHARAM SHET v SITARAM SHET**
[I L R, 11 Bom, 42]

80. ————— *Joint Hindu family—Fraudulent hypothecation by father—Suit upon the personal obligation against the father only—Money decree, Sale in execution of—Sale*

a joint Hindu
can produce as

by the son the father and
manager of a joint Hindu family executed a deed whereby he hypothecated certain zamindari property,

SALE IN EXECUTION OF DECREE

—continued

9 JOINT PROPERTY—continued

covenanting to put the mortgagee in proprietary possession thereof if the debt should not be paid on

right, title, and interest of the judgment debtor in certain joint family property was notified for sale, and a sale took place at which, upon the face of

assumed to have been passed against him in his capacity as karta, and that the other members of the family were therefore bound by the decree and sale. The other members brought a suit to recover possession of their shares. *Held* that, inasmuch as upon the terms of the sale certificate no thing more passed to the defendants at the sale than the right, title, and interest of the father, the plaintiffs were entitled to maintain the suit and to have a decree declaring them entitled to the whole property, subject to a declaration that the defendants as auction-purchasers of the father's share, might come in and claim a partition of that share out of the joint estate. **Per MAHMOOD, J**, that the plaintiffs were entitled to succeed on the further ground that the debt for which the decree against the father was passed was immoral within the meaning of Hindu law. **Simbhunath Panday v Golap Singh, L R, 13 I A, 77**. **I L R, 14 Calo, 572**. **Deendyal v Jugdeep Narain Singh, L R, 4 I A, 247**. **I L R, 3 Calo, 195**, and **Hurdoy Narain Sahu v Ruder Perakash Misser, L R, 11 I A, 26**. **I L R, 10 Calo, 626**, referred to. **RAM SARAI v KHWAL SINGH**. **I L R, 9 All, 672**

81. ————— *Decree against father—Sale of ancestral estate in execution of money decree—Son's rights and liabilities—A purchased the half share of the judgment-debtors in certain immovable family property, at a Court sale held in execution of money decrees against B and his brother, who were members of an undivided Hindu family. B's undivided son sued A—B and the remaining members of his family being also joined as defendants—to recover a share in the land, alleging that his interest was not bound by the sale, but he did not prove that the debt for which the decrees were passed was immoral, and it appeared*

and followed. **KUNHALI BEARY v KESHAVA SHAY-BAGA**. **I L R, 11 Mad, 64**

82. ————— *Joint family—Mortgage by father and eldest son—Death of*

SALE IN EXECUTION OF DECREE —continued.

9. JOINT PROPERTY—continued.

father and eldest son—Decree obtained by mortgagee against minor son represented by the widow—Sale in execution—Subsequent suit by minor to set aside sale.—In 1862 *R* and his son *A* mortgaged the property in dispute to *B*. In 1863 *R* died, leaving a widow *S* and two sons, viz., *A*, and *P*, a minor. In 1866, *A* and *S*, the latter of whom acted for herself and as guardian of her minor son *P*, settled the account with *B*, the mortgagee, obtained a fresh advance, and passed a fresh mortgage-bond to him. In 1868 *A* died. In 1869 *B*'s assignee filed a suit upon the mortgage, and obtained a decree against the mortgaged property against *S* both as guardian of the minor *P* and also against her in her individual capacity. At the Court-sale held in execution of this decree, *D* purchased the property in dispute in 1870. In 1881 *P* filed the present suit to recover possession of the property, alleging that *B*'s purchase was invalid as against him, he having been a minor at the time of the Court-sale. *Held*, upon the merits, that the debt for which the decree was passed, being a family and ancestral debt, was binding upon the whole family, including the plaintiff, who was therefore not entitled to disturb the execution-purchaser. *DAJI HIMAT v. DHIRAJRAM SADARAM* [I. L. R., 12 Bom., 18]

83. ——— Joint family—

Money-decree—Decree against father alone—Purchaser at execution-sale under such decree—How far such sale binding on the interest of the sons not parties to the suit or execution-proceedings.—In the case of a joint Hindu family whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property, or only his interest in it, passes by the sale, is to inquire what the parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying, if there was no conveyance, but only a sale in execution of a money-decree. In the case of an execution-sale, the mere fact that the decree was a mere money-decree against the father as distinguished from one passed in a suit for the realization of a mortgage security directing the property to be sold, is not a complete test. The plaintiff claimed certain property from the defendant, alleging that he had purchased it from a third person who had purchased it at an auction-sale held in execution of a money-decree obtained against the first defendant alone. The first defendant was the father of the remaining defendants, and they constituted a joint Hindu family. The sons contended that only the father's interest was bound by the sale; and the lower Courts decided in their favour. On appeal, the High Court reversed the decree, and sent back the case for a fresh decision, on the ground that the lower Courts had decided the question in the case exclusively on the ground that the property had been purchased in execution of a money-decree without referring to the execution-proceedings. *KAGAL GANPAYA v. MANJAPPA*

[I. L. R., 12 Bom., 691]

SALE IN EXECUTION OF DECREE —continued.

9. JOINT PROPERTY—continued.

84. ——— *Sale for debt of father—Suit by son to set aside sale—Failure to prove immoral purpose of debt.*—A sale in execution of a decree against a zamindar for his debt purported to comprise the whole estate of his zamindari. In a suit brought by his son against the purchaser, making the father also a party defendant, to obtain a declaration that the sale did not operate as against the son as heir not affecting his interest in the estate, the evidence did not establish that the father's debt had been incurred by him for any immoral or illegal purpose. *Held* that the impeachment of the debt failing the suit failed; and that no partial interest, but the whole estate, had passed by the sale, the debt having been one which the son was bound to pay. *Hardi Narain Sahu v. Ruder Perakash Misser*, I. L. R., 10 Cal., 626; I. L. R., 11 I. A., 26 (where the sale was only of whatever right, title, and interest the father had in property), distinguished. *MINAKSHI NAYUDU v. IMMUDI KANAKA RAMAYA GOUNDAN*. I. L. R., 12 Mad., 142 [I. L. R., 16 I. A., 1]

85. ——— *Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Transfer of Property Act, s. 99—Sale of mortgage property in execution of decree on a money-bond for interest due on the mortgage.*—The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money-bond for the interest then due on the mortgage. In 1882 the mortgagee brought a suit on the money-bond; and having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person. *Held* that the sale did not convey the interest of another undivided brother who was not a party to the decree. *Held* further per *KERNAN, J.*, that the sale in execution was invalid under the Transfer of Property Act, s. 99. *SATHUVAYYAN v. MUTHUSAMI*. I. L. R., 12 Mad., 325

86. ——— *Judgment-debtor's share in joint ancestral estate—Mitakshara law—Execution of decree by sale of such share—Rights of co-sharers not being parties to the decree or execution-proceedings—Sale certificate.*—The question was whether the whole estate belonging to a joint family, living under the Mitakshara, including the shares of sons, or the share of their father alone, passed to the purchaser at a sale in execution of a decree against the father alone upon a mortgage by him of his right. *Held* that, as the mortgage and decree as well as a sale certificate expressed only the father's right, the *prima facie* conclusion was that the purchaser took only the father's share, a conclusion which other circumstances—the omission on the part of the creditor to make the sons parties and the price paid—not only did not counteract, but supported. The enquiry in recent cases regarding the liability of

SALE IN EXECUTION OF DECREE

—continued

II JOINT PROPERTY—continued

the estate of co sharers in respect of transfers made by, or execution against, the head of the family has been this, viz., what if there was a conveyance, the parties contracted about, or what if there was only a sale in execution, the purchaser had reason to think he was buying. Each case must depend on its own circumstances. *Upooroop Tewary v Lalla Bandhjee Suhay*, 1 L R, 6 Cal, 733, distinguished. *SHANKUNATH PANDÉ v GOLAP SINGH*

[I. L. R., 14 Cal, 572]

L. R., 14 I. A., 77

87. ———— Hindu Law—

Joint family—Court sale of right, title, and interest of the father, Effect of— One R and his sons were members of an undivided family. In execution of

ed this

They

is and

nothing except R's life interest, and that on R's death they (the plaintiffs) became entitled. They also contended that even if the Court should find the lands were not service vatan lands they were at all events, ancestral property, and that the plaintiffs' interests therein were not affected by execution sales.

of the judgment debtor are ambiguous words which may either mean the share which he would have obtained on partition or the amount which he might have sold to satisfy his debt, and it is in each case a

[I. L. R., 15 Bom., 13]

88. ———— Son's interest in

ancestral property—Death of son before sale— Where the son died between attachment and sale, the judgment creditor was held to have no property in what he had attached, so as to entitle him to sell it in execution of his decree. *GOOR PERSHAD v SHERDEEN*

4 N. W., 137

89. ———— Right of pur-

chaser—Sale of reversionary interest— A, a Hindu, was possessed of an undivided moiety in certain prop-

SALE IN EXECUTION OF DECREE

—continued

9 JOINT PROPERTY—concluded

MACPHERSON, J., gave a decree for the present possessory right, but refused to make any decree as to the contingent reversionary interest of A. *KISRO DHONE GANGOOOLY v. RABUTTY DOSSES*

[1 Ind Jur., N S, 324]

90. ———— *Interest of co-widows in estate undivided—* The co-widows of one and the same husband take a joint interest in one undivided estate. *Semle—* The interest of one or two such widows cannot be sold in execution of decree. *KATHAPERUMAL v VENKABAI*

[I. L. R., 2 Mad, 194]

91. ———— *Right of purchaser under joint decree—* Where a joint decree was passed against

was executed against the father and the sole surviving judgment debtor, by the sale of his rights and interests in the property, the joint property was held to have been passed even though the sale certificate omitted the word "property". *CHOWHARY ZF-MOORUL HUQ v GOOROO CHURN ROY*

[15 W. R., 329]

10 MORTGAGED PROPERTY

92. ———— *Mortgagor, Interest of—Sale under money-decree—Sale under decree enforcing mortgage—* There are substantial differences between a sale in execution for a money decree and a sale

in mortgage, in the latter case, whatever interest the mortgagee has in the property is sold to create a mortgage.

[I. L. R., 4 Mad, 1]

93. ———— *Interest taken by purchaser—* Where the rights and interests of a judgment debtor are sold in execution, the purchaser takes the land to which they relate, subject to such mortgages and leases as may be existing. *OOJAGAN ROY v RAM KHELAN SINGH*

10 W. R., 384

94. ———— *Proclamation of sale—* Mortgages

[I. L. R., 10 Bom, 175]

95. ———— *Purchaser of mortgaged property, Rights of—Right to set aside incumbrances—* A purchaser of property sold under a decree in favour of a mortgagee cannot claim to set aside, as prejudicial to its rights, a title

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—continued.

10. MORTGAGED PROPERTY—continued.

pottah granted by the mortgagee when those rights were not in existence. It cannot be maintained that the purchaser of property sold under a decree in favour of a mortgagee takes the property free from such lease or farm as the owner might have found to be expedient or convenient, provided the value of the property was not impaired and the operation of the mortgagee's lien not impeded. *BANI PERSHAD v. REET BHUNJUN SINGH* . . . 10 W. R., 325

96. ———— *Conditional sale executed before sale of execution, but after mortgagee's decree.*—A purchaser under a decree for sale obtained by the mortgagee under a simple mortgage does not purchase subject to a conditional sale executed by the mortgagor after the prior mortgagee had obtained a decree of sale, but before the property was actually sold. *RAJNARAIN SINGH v. SHEERA MEAN* . . . 7 W. R., 67

97. ———— *Nature of mortgagee's security—Sale by mortgagee—Rights of subsequent mortgagee—Civil Procedure Code, 1859, s. 259.*—The security to which a mortgagee becomes entitled under the ordinary form of mortgage in the mofussil is the right to sell the entire estate of the mortgagor as the same existed at the date of the mortgage, and he cannot be deprived of this security by any subsequent charges on the property or prior unregistered charges which the mortgagor may create or have created. When he brings the property to sale, the sale is an out-and-out sale of the estate of the debtor, and the purchaser takes the property subject only to those incumbrances which were in existence at that date, though such of the subsequent incumbrancers as may, at the time of the sale, have taken out execution, may have a right to satisfy their claims from the surplus proceeds of the sale. In applying s. 259 of the Code of Civil Procedure to cases of the above description, the words, "the right, title, and interest of the defendant in the property sold," must be understood as meaning the right, title, and interest which the decree ordered to be sold, *i.e.*, the right, title, and interest which the judgment-debtor had in the property at the time of the mortgage. *KASANDAS LALDAS v. PRANJIVAN ASHARAM*

[7 Bom., A. C., 146]

BRJO KISHORE DOSSIA v. MAHOMED SULEEM

[10 W. R., 151]

S. C. BRAJARAJ KISORI DAS v. MOHAMMED SALEM . . . 1 B. L. R., A. C., 152

98. ———— *Right to redeem.*

—Where a decree-holder sells a mortgagor's rights and interest in property already mortgaged and declared liable to sale in liquidation of the debt for which it was mortgaged, the purchaser purchases merely the mortgagor's right to redeem. *LALLA JOOGUL KISHORE LALL v. BHUKHA CHOWDHRY*

[9 W. R., 244]

99. ———— *Right of purchaser—Rights of respective mortgagees.*—A mortgage made by way of security for money advanced remains a mortgage until the debt is satisfied, and

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—continued.

10. MORTGAGED PROPERTY—continued.

the mortgagee-creditor has every right to sue to obtain a decree and sell that which is held by him as security for his money, without any regard to the proceeding of any other subsequent mortgagee or purchaser. A purchaser at a sale in execution of such a decree under a prior mortgage, as well as the original holder of a prior mortgage, has rights far superior to those of any other mortgagee or purchaser of a subsequent date. A subsequent purchaser, by payment of an earlier mortgage, and obtaining a decree for the money so paid, does not acquire any rights belonging to that mortgage. His payment was a voluntary act, and his decree against his vendor was a personal one for a simple debt, not secured by any security connected with any portion of the land in dispute. *DHOREE ROY v. BULDEB NARAIN SINGH* W. R., 1864, 345

100. ———— *Purchase by mortgagee—Lien of mortgagee—Liability of purchaser—Incumbrances.*—Certain mouzahs were granted in zur-i-peshgi lease by G to plaintiff's ancestor. After G's death, his heir, F, pledged one of the mouzahs, B, with others as collateral security, in a bond in favour of plaintiff, and some years later executed a zur-i-peshgi pottah in favour of defendant, who obtained possession by paying to plaintiff the money due under the first zur-i-peshgi lease. Plaintiff then sued F alone on his bond and obtained a decree, in execution of which he sold a share in B and purchased it himself. In a suit for possession and to have the superiority of his lien declared over defendant's zur-i-peshgi, —Held that plaintiff was not entitled to possession until he paid off the whole of the amount advanced by the defendant to clear off the debt due under the first zur-i-peshgi lease. Held also that the holder of a subsequent incumbrance, by paying off a prior incumbrance, acquires all the rights of the latter so far as the amount actually paid by him for that purpose is concerned. *BEKON SINGH v. DEEN DYAL LALL* . . . 24 W. R., 47

101. ———— *Right of purchaser of mortgaged property First and second mortgages.*—

Where a mortgagee sues upon his mortgage-bond and his claim is decreed, the decree should be satisfied out of the mortgaged property, and not out of the right, title, and interest which remain in the mortgagor. The purchaser at the execution-sale acquires all the interest which passed by the mortgage to the mortgagee, and any interest which remained in the mortgagor—*i.e.*, his equity of redemption. If there was a second mortgage, all that it could pass from the mortgagor was his equity of redemption, and the decree in a suit on such mortgage could only authorize the sale of the equity of redemption, unless the first mortgagee was made a party, and his mortgage shown to be invalid and the second mortgage to have priority. *DOOLAL CHUNDER DEB v. GOLUCK MONEE DEBIA* . . . 22 W. R., 360

102. ———— *Effect of sale—Parties.*—The usual mode, in the mofussil Civil Courts, of selling in mortgage suits "the right, title, and interest" of the mortgagor or his heir, is not

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10 MORTGAGED PROPERTY—continued

is the right title, and interest of the mortgagor as it stood when he made the mortgage and not merely as it stood at the time of the Court sale. One *U* mortgaged certain immovable property to *A R* (defendant No 1) for Rs 400 on the 7th May 1865. On the death of *U*, the mortgagor *A R* brought a suit (No 311 of 1871) against his widow *K* (defendant No 2) but did not make his (*U*'s) children (who were minors) parties to it. On the 28th July 1871 *A R* obtained a decree for Rs 160 being the amount of principal and interest due on his mortgage with further interest from the date of suit to date of payment. That decree directed sale of the property.

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effect that he had purchased at the Court sale the right title and interest of *H* (the widow) in the mortgaged property. On the 17th August 1871 the auction purchaser sold the property for Rs 700 to the father of the plaintiff. In 1871 the plaintiff sued *A R* (the mortgagor and decree holder) to recover possession of the property with mesne profits. *U*'s widow *K* and children (two sons and a daughter) were

dispute and collected the produce thereof. Defendant No 1 (*A R*) denied his liability. The

defendants Nos 3 and 5 as they had not been

mortgage-decree in suit No 311 of 1871 and the

(defendant No 2) in the mortgaged property and did not affect the rights of defendants Nos 3 and 5 who were not parties to it. On appeal to the High Court—*Held* that the plaintiff

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—continued

10 MORTGAGED PROPERTY—continued

would have obtained if they had been made parties to that suit. *H*, the right of redeeming the property by paying off the mortgage. The High Court accordingly reversed the decree of the District Judge and directed the defendants Nos 3 and 5 to pay to the plaintiffs within six calendar months from date the sum of Rs 400 with interest on the principal (Rs 400) from date of the institution of suit No 311 of 1871 until payment. The Court further directed that in default of payment the mortgage should be foreclosed and defendants Nos 3 and 5 precluded from redeeming the property which should be delivered up to the plaintiff. **ABDULLA DALLA v. AN DULLA** I L R., 6 Bom, 3

See also **SERINGAPUR v. PETITE**

I L R., 2 Bom, 662

108 ————— Decree enforcing mortgages—Priority—Certain immovable property or two such property at the sale in the execution of the decree which enforced the earlier charge is as entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree

Moracha Koor 20 W K 201 distinguished
JANKI DAS v. BADEI NATH I L R., 2 All, 698

104 ————— Right of prior mortgagee—On the 31st August 1863 *A* mortgaged his house to *B* who brought a foreclosure suit and on the 7th Jul the sale of the property was paid on or before the Court having been

that the plaintiff's sale was subject not only to the mortgage of 1863 but also to the decree upon it under which the right title and interest of the mortgagee *A* passed in 1870 to *C* whose purchase was entitled to preference to the plaintiff's purchase in 1868. **RAJJI NARAYAN v. KRISHNAJI LAKSHMAN** [11 Bom, 139]

105 ————— Sale under mortgage for payment of Government revenue—Rights of respective purchasers—In 1855 a decree for an account was passed in the Supreme Court of Calcutta against *A* an executor. *A* died in 1856 and the suit which was revived against his representatives came on for consideration on further directions on 29th August 1866. It was then found that *A*'s estate was liable for Rs 132,406 11 8 and his representatives were ordered to pay this money into Court. The representatives having made default in payment,

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—continued.

10. MORTGAGED PROPERTY—continued.

a writ of *feri facias* was issued, under which the property was sold by the Sheriff of Calcutta, and conveyed by him to *B* on 1st April 1867. Previously to this, the representatives of *A* had, on 11th January 1865, mortgaged the same property, together with other lands, "for the purpose of paying the Government revenue of certain talukhs belonging to *A*, deceased;" and the mortgagee having obtained a decree on his mortgage, the property was sold to *C* under that decree on 30th March 1867. In a suit for possession by *C* against *B*.—*Held* that, though the sale to *B* was made for the express purpose of paying the debts of *A*, *B*'s title was not to be preferred to that of *C*, who claimed under the mortgage of 1865, which was made for the purpose of paying Government revenue; and, *scilicet*, the result would be the same even if the mortgage of 1865 had not been made for the purpose of paying Government revenue, as it did not appear that the mortgagee, at the date of the mortgage, knew that there were unpaid creditors of *A*, and that *A*'s representatives intended to misapply the money so advanced to them. *Greender Chunder Ghose v. Mackintosh*, 1. L. R., 4 Cal., 497, followed. *KASSIMUNNISSA BINEE v. NIJMATNA ROSE*

[I. L. R., 8 Cal., 79

9 C. L. R., 173 : 10 C. L. R., 113

108. Money-decree—

Decree enforcing hypothecation—Act X of 1877 (Civil Procedure Code), ss. 287, 316—Act VIII of 1859 (Civil Procedure Code), ss. 219, 259.—Certain immovable property was put up for sale, under the provisions of Act X of 1877, in execution of a decree for money, and was purchased by *C*, with notice that *L* held a decree enforcing a lien on such property. Subsequently *L* applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by *S*. *S* sued, by virtue of such purchase, to recover possession of such property from *C*. *Held* that, inasmuch as under Act X of 1877 what is sold in execution of a decree purports to be the specific property, and as *C* had purchased the property in suit with notice of the existing lien on it and subject to its re-sale in execution of the decree in execution of which *S* had purchased it, what actually was sold in execution of that decree to *S* was such property, and *S* was entitled to possession of such property under such sale. Sales under Act VIII of 1859 and Act X of 1877 distinguished. *SHEO RATAN LAL v. CHOTAY LAL*. . . I. L. R., 3 All., 647

107. Unauthorized

sale of mortgaged property—Payment by vendor of mortgage-debt—Lien of vendee.—The plaintiff as purchaser at a Court's sale sued to recover land in possession of the defendant. The defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage. The previous owner had left a minor son. The lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow to the defendant was invalid, as she had not obtained a certificate of admi-

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—continued.

10. MORTGAGED PROPERTY—continued.

nistration to her husband under Act XX of 1864. *Held* that the defendant had a lien upon the land for the amount of the mortgage-debt which he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by the lien. *KEVARJI v. MOTI HARIDAS*

[I. L. R., 3 Bom., 234

108.

Sham mortgage.

—In 1861 *J* mortgaged certain lands to the defendant, who in 1861 sued upon the mortgage, and obtained a decree for sale. The decree remained unexecuted by the defendant. In 1869 the lands were sold in execution of a money-decree against *J*, and the plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1861. The Court found that the mortgage of 1861 was not a *bona fide* mortgage. In a suit for possession, — *Held* that the plaintiff was entitled to succeed. The decree obtained in 1861, being based upon a colourable mortgage, gave the defendant no claim as against a subsequent *bona fide* purchaser for value. What was purchased by the plaintiff at the execution sale in 1869 was the real interest of *J* in the lands in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction. *GOPI WASUDEY v. MARKANDE NARAYAN BHAT*. . . I. L. R., 3 Bom., 30

109.

Suit for rent after execution of mortgage-decree.—*P* got a decree on a mortgage bond in the terms of a compromise by *C* and others to the effect that the amount due should be paid by instalments, the property mortgaged remaining hypothecated. Meantime one *M* got a decree against *C*, and in execution sold part of the property, — *viz.*, a house, — subject to the lien of *P*, bought it in herself, and sold it again by private sale to plaintiff, who realized rent for some months. When *M* was put in possession, *P* petitioned the Court, objecting, but being referred to a regular suit he executed his original decree, bringing the hypothecated property to sale, and bought it himself, without, however, getting possession from the Court till many months later. Plaintiff then sued the tenant of the house in the Small Cause Court for rent, and *P* intervened as a party to the suit, claiming the rent which had fallen due from the date of his getting possession. *Held* that the plaintiff was not in a position to maintain the suit, his possession having been put an end to by *P*, whose lien on the property was anterior to the sale under which plaintiff purchased. *POORNO CHUNDER BOSE v. NOBIN CHUNDER GHOSH*

[14 W. R., 77

110.

Sale of decree-holders' rights and interests—Notice of assignment.—Where the rights and interests of decree-holders in a decree are sold in execution, the party purchasing *bona fide* without any knowledge of a previous assignment of those rights and interests is entitled to the proceeds of the purchased decree free from any trusts or obligation in favour of the assignees. *NUNHUK SAHOO v. JUGGESSUR OOPADHYA*

[20 W. R., 408

SALE IN EXECUTION OF DECREE

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10 MORTGAGED PROPERTY—continued

111. — Notice—*G* borrowed money from *S*. He then borrowed money from *D*, mortgaging as security the property in suit. After that he borrowed from plaintiffs executing a bond by which he again mortgaged the same property by which to sale for in execut

proprietors Plaintiffs now sued for get debt on said

and were entitled to

they could only retain possession by paying on both mortgages. Held also that plaintiffs purchased not merely the equity of redemption but *G*'s rights and interests as they were when the mortgage was created subject to the mortgage held by *D* but free from subsequent incumbrances. **NARAIN SAHOO v OCHHOOT SAHOO** 14 W. R., 233

See **WAJED HOSSEIN v HAYZ AHMED REZAN** [17 W. R., 480

112. — Money decrees—

Mortgage decrees—Notice—Civil Procedure Code (Act XIV of 1882), s 287—A creditor obtained two decrees against his debtor one being a mortgage-decree to enforce his lien on certain property, and the other a simple money decree. In execution of the second decree, the property over which the judgment-creditor had a lien was sold and was purchased by a third person. Subsequently, in execution of the first decree at the instance of the judgment creditor, this same property was advertised for sale but on the

BUR SINGH I. L. R., 10 Calc., 809

113. — Priority—The

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—continued

10 MORTGAGED PROPERTY—continued

after the Registration Act of 1864 came into force, but were, however, unregistered. Held that if the plaintiff had come in and offered to satisfy so much of

defendant **RAJAH RAM v BAINEE MADHO** [5 N. W., 81

114. — Effect of sale—

Estoppel—On 10th September 1868 *A* mortgaged a house to *B* who registered the deed but did not obtain possession of the premises. On 2nd July 1868 *A* mortgaged the same house to *C* who registered the mortgage deed and took possession of the premises. On 10th October 1868 *B* sued on his mortgage and obtained a decree against *A*'s son who was a minor, and who was represented by his mother as his guardian. She, however, had obtained no certificate of administration under the Minors Act XX of 1864. On 17th December 1869 the mortgaged property was sold by the Court in execution of *B*'s decree. The plaintiff bought it, and obtained a certificate of sale. On the plaintiff attempting to take possession of the property the defendant who was *C*'s widow and heiress resisted him and he thereupon sued to recover it. Held that the plaintiff was entitled to possession. He stood, at least in the same position as had been occupied by *B* before the sale and *B*, as prior mortgagee had a superior title to that of defendant, who claimed under a subsequent deed. Where mortgaged property is sold in execution of a decree in a suit brought upon the mortgage the interest of the mortgagee at whose instance the sale is made, is held to pass to the purchaser, and the mortgagee is estopped from disputing that such is the effect of the sale. **KHEVERAJ JUSREFF v LINGAYIA**

[1 I. R. N. Bom., 2

115. — San mortgage—

Registration of certificate of sale—Civil Procedure Code, 1877, s 287—Notice—Warranty of title—A buyer of property at an execution sale who registers his certificate of sale does not thereby acquire a

consequence of a san mortgage he sold property as

SALE IN EXECUTION OF DECREE —continued.

10. MORTGAGED PROPERTY—continued.

free of that charge, he would commit a fraud. The Court cannot be deemed to do that which would be a fraud if done by the judgment-debtor. If, then, the Court sell only the right, title, and interest of the judgment-debtor subject to all existing equities against the property sold, the registration of the Court's conveyance (*viz.*, certificate of sale) cannot enlarge the scope of that conveyance and discharge the property from any unregistered incumbrance which was binding on the judgment-debtor. *Per MELVILL, J.*—In the case of execution-sales under s. 287 of the Civil Procedure Code (Act X of 1877), notice is given to purchasers that the sale only extends to the right, title, and interest of the judgment-debtor, and that the Court ordering the sale does not warrant the title. This being so, it seems clear that a person who buys an avowedly doubtful title, and pays for it on that understanding, cannot claim to be a purchaser without notice. *SOBHAGCHAND GULABCHAND v. BHAI-CHAND* **I. L. R., 6 Bom., 193**

See *LAKSHMANDAS SARUPCHAND v. DASRAT* [I. L. R., 6 Bom., 168] and *RUPCHAND DAGDUSA v. DAVLATRAY VITHAL-RAV* **I. L. R., 6 Bom., 495**

116. ————— *Mortgage-debt payable by instalments—Money-decree obtained by mortgagee for two instalments—Sale of mortgaged property in execution of money-decree for such instalments without notice by mortgagee of lien for future instalments—Property sold free of incumbrances—Civil Procedure Code (Act XIV of 1882), ss. 27, 287.*—The effect of ss. 237 and 287 of the Civil Procedure Code plainly is to impose a duty on the person applying for execution to disclose to the Court his own lien (which he must know of) in his application for sale, and on the Court the duty of specifying the same in the proclamation. Where therefore in execution of a simple money-decree obtained for some of the instalments due on his mortgage-bond a mortgagee brought to sale the property which he held in mortgage, but in his application for execution did not mention his lien on the property for the instalments that were still to fall due,—*Held* that the purchaser, if he supposed that he was purchasing the full proprietary title, purchased the property free of the mortgagee's lien. *Agarchand v. Rakhma*, I. L. R., 12 Bom., 678; *Kheiraj v. Lingaya*, I. L. R., 5 Bom., 2; *Sheshgiri v. Salvador Vas*, I. L. R., 5 Bom., 5; and *Dhondo v. Rajji*, I. L. R., 20 Bom., 290, referred to. *RAMCHANDRA VITHURAM v. JATRAM* **I. L. R., 22 Bom., 686**

117. ————— *Mortgagee not in possession—Registered lease—Effect of sale in transferring property to purchaser.*—A mortgaged his land to B in 1861, which mortgage was then registered, but the mortgagee did not enter into possession. Subsequently, in 1866, A leased the same land to C. That lease was registered, and C entered into possession. In 1867 B obtained a decree upon his mortgage, and in execution attached and sold the mortgaged property. C, who had applied to have

SALE IN EXECUTION OF DECREE —continued.

10. MORTGAGED PROPERTY—continued.

this attachment of the land removed and failed in his application, sued to establish his right under the lease and recover possession. *Held* that, under the lease of 1866, he could only take what the mortgagor had to give him, *viz.*, a lease subject to the registered mortgage. Where a decree is obtained upon his mortgage by a mortgagee, and the mortgaged property is sold under the decree for the purpose of paying off the mortgagee, the interest of both mortgagor and mortgagee passes to the purchaser. The mortgagee is estopped from disputing that such is the effect of the sale, so far as his interest is concerned, although the officer of the Court may only have described the sale as one of the right, title, and interest of the mortgagor. It is not the practice in the mofussil to require the mortgagee to convey to the purchaser: the transfer takes place by estoppel. *SHESHGIRI SHAN-DHOG v. SALVADOR VAS* **I. L. R., 5 Bom., 5**

118. ————— *Mortgage without possession—Right of mortgagee as against the purchaser—Difference between a mortgage valid as against a private purchaser for valuable consideration and one valid as against a purchaser at a Court-sale—Priority—Optional registration.*—On the 19th September 1871 the land in dispute was mortgaged by L (defendant No. 1) to the plaintiff for Rs. 25. The deed of mortgage was not registered. By it defendant No. 1 agreed to pay interest at the rate of one pice per rupee per mensem, and it was provided that the mortgagee was to remain in possession for a period of twenty-five years in lieu of principal and interest, and that the mortgagor was not to claim the property back, unless he paid the principal and interest that might accrue due in twenty-five years from the date of the bond. On the 8th July 1872 the land was sold in execution of a decree against the father of L and purchased by B (defendant No. 2), who obtained possession under the certificate of sale. In 1874 the plaintiff (the mortgagee) sued L and B for possession of the property. It was contended for B (defendant No. 2) that the mortgage did not bind him, because he was a purchaser for value without notice of the mortgage, and because it was not accompanied with possession. *Held* that, although the mortgage to the plaintiff might have been without possession, it would bind the mortgagor himself, and was therefore binding as against defendant No. 2, who purchased at a Court-sale under a decree obtained against the mortgagor. A purchaser at such a sale takes only that which the judgment-debtor could himself honestly dispose of. Possession or registration is necessary to validate a mortgage in the Decan or elsewhere in the Presidency of Bombay (except Gujarat) against a private purchaser for valuable consideration, but not against a purchaser at a Court sale. *BAPUJI BALAL v. SATYANIAMABAI* [I. L. R., 6 Bom., 490]

See *SHIVRAM v. GENU* **I. L. R., 6 Bom., 515**

119. ————— *Unregistered san-mortgage—Sale—Subsequent unregistered mortgage of same property—Decree on latter mortgage and*

SALE IN EXECUTION OF DECREE

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10 MORTGAGED PROPERTY—continued

sale in execution—Sale certificate registered—Priority—Interest passing on sale of mortgaged property in execution of a money decree and of a decree in mortgage—One H and his sons B and C executed a son mortgage of certain ancestral property in plaintiff's favour in 1885. The mortgage was unregistered. In 1886 the same property was mortgaged by C alone by a deed which was also unregistered. In 1889 C's mortgagee obtained a decree on his mortgage for sale of the mortgaged property, and in execution put up the property to auction in 1892, when defendant purchased it. Defendant got his sale certificate registered. In 1894 the plaintiff brought this suit to set aside the sale of the mortgage that as to C registered his unregistered mortgage. Held that the plaintiff was entitled to a decree. His claim was superior to the defendant's. The defendant had purchased the interest which C had mortgaged in 1889. But that mortgage was unregistered and was therefore subject to the plaintiff's mortgage, which, although unregistered, was earlier in date. The defendant, by registering his certificate of sale, could not enlarge the estate which the certificate conveyed to him. By a sale of mortgaged property in execution of a decree obtained by a mortgagee against the mortgagor upon the mortgage the interest both of the mortgagor and mortgagee passes to the purchaser. But by a sale of mortgaged property in execution of a money decree obtained by the mortgagee against the mortgagor, the interest of the defendant (mortgagor) alone passes to the purchaser. MAGAZLAL SHAKRA GIRDHAR. I L R., 23 Bom., 945

190 — Mortgaged land

subsequently sold by mortgagee in execution of a money decree—Purchaser at such sale with notice of mortgage—Mortgagee estopped from subsequently enforcing his mortgage as against purchaser—Fraudulent concealment of lien—Registration not equivalent to notice in case of fraud—Civil Procedure Code (VIII of 1859), s. 213—Where a judgment creditor in execution of a money decree sells property as belonging to his judgment debtor, he is afterwards estopped from enforcing as against the purchaser a previous mortgage of the property which has been created in his own favour but of which he had no notice.

registered. In 1867 R and G mortgaged certain land to A. In 1877

through the Court. In the meantime G R brought another suit upon his mortgage against his mortgagors. He obtained a decree, and in April 1872 ejected the plaintiff and obtained possession. In 1883 the plaintiff filed the present suit against R, G, and

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10 MORTGAGED PROPERTY—continued

G R to recover the lands. Held that the plaintiff was entitled to recover G R (the mortgagee), when bringing the land to sale in execution of his decree, was bound by s. 213 of the Civil Procedure Code (VIII of 1859) to disclose the limited interest of his judgment debtors in it. By concealing his lien he had induced the plaintiff to pay full value for the property, and he could not therefore retain his lien. By his omission he was estopped from disputing the plaintiff's title. The rule that registration of a mortgage amounts to notice to all subsequent purchasers of the same property, does not apply to a case where there has been a fraudulent concealment by a judgment creditor of the extent of his judgment debtor's interest in the property brought by the judgment creditor to sale. AGARCHAND GUMARCHAND v. RAKHMA HANMANT. I L R., 12 Bom., 678

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Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption—On the 21st December 1871 three of the defendants in this suit mortgaged four groves to H. In 1872 the plaintiffs obtained a money decree against one D, and in August 1872, in execution of that decree sold the said groves and at the sale purchased them and also two mills which were not in dispute in this suit.

the mortgagors on their mortgage, and obtained a decree on it and under the decree brought the said groves to sale in 1877, and purchased them himself. In May 1880 H sold the groves to two of the defendants. The plaintiffs, who were not parties to the suit which resulted in the decree under which the groves were sold in 1877, instituted this suit for possession of the groves. Held that, notwithstanding the sale of 1872 what was sold under the decree of 1877 was the right title, and interest of the mortgagors.

a sale under a decree for sale by a mortgagee the right title, and interest of the mortgagor which in

the sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of mortgagee's decree, and who was not a party to the suit in which the mortgagee obtained his decree would have the right to redeem the property which the mortgagor would have had but for the decree. This view is consistent with the principles of equity and recognized by the Transfer of Property Act. Muhammad Samsud din v. Man Singh, I L R., 9 All., 125, followed. GAJADHAR v. MULCHAND. I L R., 10 All., 520

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—continued.

10. MORTGAGED PROPERTY—continued.

122. ———— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.*—Where mortgagees executed their decree on the mortgage, and, having obtained leave to bid at the judicial sale, purchased the property, —*Held* that they could not be held to have purchased as trustees for the mortgagors, the leave granted to bid having put an end to the disability of the mortgagees to purchase for themselves, putting them in the same position as any independent purchasers. *MAHABIR PERSHAD SINGH v. MACNAGHTEN*. I. L. R., 16 Calc., 682 [L. R., 16 I. A., 107]

DAKSHINA MOHAN ROY v. BASUMATI DEBI
[4 C. W. N., 474]

123. ———— *Equities of mortgagors.*—In a suit for possession by the certificated purchaser of one-third of certain mouzahas which had been sold in execution of a decree obtained by the mortgagee against the defendant as mortgagor, it appeared that the defendant had, in a previous execution-sale at the instance of a second mortgagee of the same property, bought the same subject to his own first mortgage. The High Court held that the plaintiff should be treated, not as a purchaser, but as a mortgagee in respect of his purchase-money. They then directed that only so much of the original mortgage-debt as should be apportioned against the share bought by the plaintiff should be realized in his favour. *Held* that this ruling and direction were founded on a misapprehension that the purchaser had a right to possession of the property which he had bought, and that the defendant had no equity to prevent it. *LUTF ALI KHAN v. FUTTEH BAHADOOR* [L. R., 16 I. A., 129 I. L. R., 17 Calc., 23]

124. ———— *Rights of purchasers under mortgage-decree—Purchases in execution by decree-holders—Title of purchaser holding a decree on a mortgage which had preceded his opponent's decree.*—The plaintiffs and defendants, either party holding a separate decree against the same estate, had by leave purchased in execution. Both parties claimed the proprietary right and possession, the defendants holding the latter. The first of the decrees in date was the plaintiffs' for money against the representatives of the deceased owner of the property, which before then had been mortgaged to the defendants by his widow. The plaintiffs obtained only the equity of redemption, their purchase having been of the right, title, and interest. The mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution, and defended the possession which they obtained. *Held* that the defendants, in whose favour the decree had been made upon a *bond fide* mortgage, without notice that the mortgagor had been only holding benami for her husband, had the better title; that the High Court had rightly disallowed an objection taken by the plaintiffs, that this defence, as distinguished from the defendants' answer that the

SALE IN EXECUTION OF DECREE

—continued.

10. MORTGAGED PROPERTY—continued.

widow was the real owner, had not been set up or decided in the Court of first instance. *MAHOMED MOZUTTER HOSSEIN v. KISHORI MOHUN ROY*

[I. L. R., 22 Calc., 909
L. R., 22 I. A., 129]

125. ———— *Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.*—A mortgaged certain land to B, but remained in possession thereof. Subsequently A sold a portion of the said land to C in consideration of her paying off the mortgage-debt due to B. C entered into possession, but was unable to satisfy the debt. C died, and A sued C's daughter and legal representative for damages sustained by him from the non-payment of the purchase-money by C. A obtained a decree, and, the money not being paid as therein decreed, applied for execution, and brought to sale the equity of redemption vested in C by virtue of the sale. By leave of the Court, A bid at the Court-sale and bought the right of redemption and recovered back possession of the land sold to C. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court sale for the equity of redemption. The defendant contended that A was bound to give credit for the full value of the land under mortgage. *Held* that, having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, A's position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his equity of redemption, is the cash payment for the equity of redemption *plus* the debt, i.e., the amount undertaken to be paid to the mortgagee, and that for these amounts A was bound to give credit. *KRISHNASAMI AYYAR v. JANAKI-AMMAL*. I. L. R., 18 Mad., 153

126. ———— *Application for re-sale in execution of decree—Judgment-debtor purchasing benami—Rights of mortgagee.*—Upon an application made on the 28th August 1891 for execution of a mortgage-decree, the mortgaged property was sold and the judgment-debtors purchased it benami at a low price. Thereupon the decree-holders made an application on the 12th November 1891, asking the Court to set aside the benami purchase and re-sell the property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but the lower Appellate Court came to a contrary conclusion and set aside the sale on the 22nd July 1892. The High Court in second appeal accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property of the

SALE IN EXECUTION OF DECREE

—continued

10 MORTGAGED PROPERTY—continued

debtors might be sold in satisfaction of the mortgage-debt. This judgment was passed on the 4th August 1893. On an application for execution made on the 3rd December 1894, objections were raised on the ground that the property was not liable to be sold again in execution of this decree. *Held* that the previous sale under the mortgage decree was no bar to a fresh sale under the same decree. *Ram Autar Singh v. Tula Ram*, 5 C. L. R. 227, *Ottar v. Lord Iaur*, 2 K. & J. 650, and *Deo M & G*, 638, and *Latif Ali Khan v. Futeh Bahadur*, 1 L. R. 17 Calcutta, 32, referred to. **RAGHUNATH SAINI SINGH v. LALJI SINGH**

[I L R., 23 Cal., 397

127. _____ *Transfer of*

Property Act (IV of 1952), s. 88—Suit for sale on a mortgage—Purchase at auction sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which decree-holder must give credit to mortgagee

the mortgaged property purchased, by him, but only to the amount of the actual purchase money. *Mahabir Parshad Singh v. Maenaghten, I L R, 16 Cal, 692, Sheenath Doss v. Janki Prashad Singh, I L R, 16 Cal, 182, and Ganga Pershad v. Jowahir Singh, I L R, 19 Cal., 4, r*ferred to. **MUHAMMAD HUSEN ALI KHAN v. DHANAM SINGH**

[I. L. R., 18 A11, 31]

128. _____ *Transfer of*

Property Act (IV of 1882), ss 92 and 63—
Decree for sale on a mortgage—Order absolute for
sale—Civil Procedure Code (1882), ss 211 and
810A.—Ss 291 and 310A of the Code of Civil
Procedure, 1882, will apply to a sale held in virtue
of an order absolute for sale passed under s 89 of
the Transfer of Property Act, 1882, although no
power is given under that Act to postpone the
operation of an order under s 89. RAJAHAM
SINGHJI v. CHURUKI LAL. I L.R. 19 ALJ. 205

But see KEDAR NATH RAUT = KALI CHURN
RAM . I. L. R., 25 Cal., 703

129. _____ Sale in execu-

and costs (including the costs of the sale) are tendered to the officer conducting the sale, or when it is proved to his satisfaction that the amount of such

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—continued.

10 MORTGAGED PROPERTY—concluded

debt and costs has been paid into the Court that ordered the sale *Rajaram Singh; v Chunn Lal, I L R, 19 All, 205*, followed *HARJAS RAI v RAMESHAR I. L R, 20 All, 354*

11 DECREES AGAINST REPRESENTATIVES

130. ——— Liability of legal representative of deceased person—*Right of bona fide purchaser without notice at execution sale*—A bona fide purchaser without notice for valuable consideration at an auction-sale is, as a general rule,

[8 Bom, A. C., 37

131. ——— Decree against widow in representative capacity—*Right and interest*

sale in one place said that the property to be sold was the property of the widow, and in another the rights and interests of the debtor. *Held* that the

rights which were expressed, and not those which ought to have been expressed, in the proclamation of sale.) BUKSH ALI SOWDAGUR & ESSAM CHUNDER MITTER W. R. F. B. 119

■ C ISHAN CHUNDER MITTER v. BUKSH ALI
SOUNDAGUR . . . Marsh. 614

See also COURT OF WARDS v. COOMAR RAMA-
PUR BINGH . . . 10 B L R. 294

S C GENERAL MANAGER, RAJ DURBUNGHA &
RAMPUT SINGH . 14 Moore's I. A., 605
17 W R., 459

and SOTISH CHUNDER LAHRY v NILCOMUL
LAHRY . . . I. L. R., 11 Calc., 45

132 ————— Property sold as right and
interest of widow—*consent* see note d, l. i. 7

—Right of
quired by.—
presence of

SALE IN EXECUTION OF DECREE —continued.

11. DECREES AGAINST REPRESENTATIVES —continued.

property in dispute was sold as the right and interest of the widows,—*Held* that the auction-purchaser, under the circumstances of the case, acquired by the purchase the right and interest of the original debtor in the property, though in the sale notification those of the widows were advertised to be sold. *TARAKANT BHUTTACHARJEE v. LUKHEE DABEA. TARAKANT BHUTTACHARJEE v. WISE* . . . 2 Hay, 8

133. Interest of persons as representatives — *Property wrongly described* — *Civil Procedure Code, 1859, s. 203.*—Where a property is described at the time of an execution sale as the property of judgment-debtors who were sued as mere representatives of a deceased judgment-debtor, *prima facie* what is sold is the property of the deceased debtor; and even if the decree is in terms as if it were a personal decree, and does not follow the wording of Act VIII of 1859, s. 203, yet it must be construed as if it was for the debt of the deceased. *LALLA SEETA RAM v. RAM BUKSH THAKOOR*
[24 W. R., 383]

134. Contents of application for execution and of notification and proclamation of sale—*Sale of interests of minor*—*Civil Procedure Code, 1859, ss. 212, 249.*—Where an application for execution of a decree omits to give the names of all the parties as required by s. 212, Act VIII of 1859, even if it shall appear from other parts of the proceedings who those parties are, the parties named must be understood to be the parties defendants against whom the execution of the decree is sought. Parties present at a sale are not bound to refer to the decree as laid down in *Ishan Chunder Mitter v. Buksh Ali Sowdagur, Marsh.*, 614, nor must they be considered as knowing its contents unless they are stated in the notification of sale. The proclamation and notification under s. 249 are intended to inform persons what is to be sold, and to give the names of the parties defendants whose rights and interests in it are to be sold. In the case of a sale in execution of a decree against a party as a representative of a deceased person, the proper course is to give in the description of the property to be sold the name of the defendant against whom the decree was obtained, and, in describing what was to be sold, to say the right, title, and interest of the defendant as the representative of the deceased. A guardian has no right or interest in a minor's property, and the Courts ought to be extremely careful with regard to allowing the property of minors to be sold in execution of a decree. The purchaser in this case was held to have acquired under his purchase no title to the property of the minor, the property not having been described as the property of the minor. *ABDOOL KUREEM v. JAUN ALI* . . . 18 W. R., 56

135. Guardian not properly appointed—*Act XX of 1864—Parties*—*Mad. Reg. V of 1804—Form of decree.*—*J* (defendant No. 1) brought a suit (No. 374 of 1861)

SALE IN EXECUTION OF DECREE —continued.

11. DECREES AGAINST REPRESENTATIVES —continued.

against the plaintiff's father *G*. On a mortgage-bond, dated the 2nd April 1856, *G* having died before any decree was passed, his widow (plaintiff's mother) was substituted as defendant, and a decree was made against her *ex-parte*. It was, however, set aside after her death on the application of *M* (defendant No. 2), the sister of *G*, on the ground of want of due service of process upon *G* and his widow. *M* was substituted as defendant in the suit, and a new decree was made in her favour. That decree was reversed, on appeal, by the District Court, which allowed *J*'s claim. In execution of the decree of the Appellate Court, the mortgaged property was sold and purchased by *J* for Rs250. *J* obtained certificate of sale headed thus: "*J*, son of *L*, plaintiff; *G*, son of *N*, deceased, supplement or (substitute) his sister *M*, defendant;" and it certified that *J* had purchased "all the right, title, and interest which the said defendant had in the said property." *J* was put into possession of the property. In 1877 the plaintiff (son of the original mortgagor *G*) filed the present suit against *J* and *M*, alleging that the mortgage-bond on which *J* had obtained his decree had been forged by *J*, and contending that the decree and subsequent proceedings under it did not affect his rights, inasmuch as he had not been made a party to them. The prayer in the plaint was that the decree and sale should be set aside and the property restored to his possession. The defence of *J* substantially was that the suit and appeal were defended by persons who were proper guardians of the plaintiff, and had been in the management of his property. *M* did not appear. The Subordinate Judge rejected the plaintiff's claim, holding that *M* was his guardian and manager of his property in the previous suit and appeal, and that the mortgage-bond was genuine. On appeal, that decree was reversed by the District Judge, on the ground that the plaintiff had not been represented in the previous litigation by a guardian duly appointed under Madras Regulation V of 1804, and was no party to it. He accordingly allowed the plaintiff's claim. On second appeal to the High Court,—*Held* that on the death of *G* the plaintiff was his sole heir; that the equity of redemption in the mortgaged property vested in him; and that the inheritance was wholly unrepresented in the previous litigation, inasmuch as *M* was not appointed guardian of the plaintiff's person or administratrix of his estate, either under Madras Regulation V of 1804, ss. 2, 19, 23, or under Act XX of 1864; nor was she appointed his guardian *ad litem* in the mortgage suit. *Ishan Chunder Mitter v. Buksh Ali Sowdagur, Marsh.*, 614, distinguished. *JATHA NAIK v. VENKATAPA. I. L. R., 5 Bom., 14*

136. Sale in execution of a decree against a deceased person represented by a minor son—How far such sale affects interest of an heir not party to decree or execution-proceedings.—*K*, a Mahomedan woman, who was a co-sharer in a certain khoti vatan, died indebted, and was sued after her death as "represented by her

SALE IN EXECUTION OF DECREE

—continued

11 DECREES AGAINST REPRESENTATIVES

—continued

minor son represented by his guardian" A decree having been obtained against K, as so represented

He now sued the defendants, who were K's co-sharers in the khoti, to recover the profits of K's share which they had received K besides her minor son, had left her surviving a daughter who had not been made a party to the suit or to the execution proceedings and the defendants contended that her share in her mother's estate had not passed to the plaintiff Held that the plaintiff was entitled to the whole of K's share The debt due by K was

insolvent, and the
share of K's
share by

the daughter KHUESDET BIBI v KESO INAYEK
(I L R, 12 Bom, 101)

187 ——— Representatives of deceased Mahomedan—Sale subject to mortgage—Power of heirs to alienate—The heirs of a deceased Malomedan mortgaged some property of their ancestor After the mortgage a judgment

in law,
and good
Mahomedan
subject

509

188 ——— Purchaser of share of estate Rights of—Purchase from some of the heirs—Absent heirs, Reappearance of—B R, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8 annas share and after

was sold in execution thereof and purchased by H in May 1874 B R at his death left also a sister,

against S and H for possession of the share so purchased by him,—Held that S did not represent the

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—continued

11 DECREES AGAINST REPRESENTATIVES

—continued

whole estate of B R, and the share purchased by the plaintiff did not pass under the execution sale to H, the plaintiff, therefore, was entitled to recover HENDRY v MUTTY LALL DHUR

[I L R, 2 Calo, 395]

139 ——— Purchase of interest of some of the heirs—Heir not party to suit—Right acquired by purchaser—A, a Mahomedan,

portion of the property which was situated in Calcutta After A's death the L Rank sued his daughter and her husband and two of her husband's brothers in a mofussil Court to realize certain mortgage securities executed by A to the Bank and obtained decree by consent Neither the widow nor B who was then absent from the country were parties to this suit The Bank in execution of their decree, caused certain property of A, including the undivided moiety of the Calcutta property to be sold by the Sheriff of Calcutta The defendant became the purchaser at this sale, and obtained possession of the property The certificate of sale stated that what was sold was 'the right title and interest of A, deceased the ancestor and of the defendants (naming them) the representatives in a moiety of a piece of land situate,' etc B afterwards sold and assigned her share in (among other properties) the above mentioned undivided moiety of the Calcutta property to the plaintiff who now sued the purchaser at the execution sale to recover the subject of his purchase Held by GARTH C J KEMP and JACKSON JJ (MAREBY and AINSLIE JJ, dissenting) that the decree and the execution founded upon it did not affect the share of B in the estate of A and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff ASSANATH PUNESSA BIBEE v LUTCHMEET SINGH I L R, 4 Calo, 142

E C ASHRAF ALI v LUTCHMEET SINGH

[2 C L R, 223]

140 ——— Mahomedan law—Decree against heir of deceased Mahomedan—Under Mahomedan law, a decree against one heir of a deceased debtor cannot bind the other heirs A

suit A decree was made by consent and in execution of that decree the right title, and interest of the mortgagor were sold The assignee of the sister then sued the purchaser to recover her annas share without making the original mortgagee a party Held that the mortgagee was not a necessary party to the suit and that the share of the sister notwithstanding that the right title, and interest of the mortgagor had been sold, was not affected by the sale, and that the plaintiff as her assignee was

SALE IN EXECUTION OF DECREE

—continued.

11. DECREES AGAINST REPRESENTATIVES

—concluded.

entitled to recover. *SITA NATH DASS v. LUCHMIPUT SINGH* 11 C. L. R., 268

141. ————Mortgage by one of the heirs of deceased—*Direction in will for payment of debts—Decree against heirs for debt of ancestor—Charge on property.*—A testator by his will directed payment of all his debts, and subject thereto devised his property to his heirs. After one of the testator's creditors had obtained a decree against the heirs in their representative capacity, which by its terms was to be satisfied out of the assets left by the testator, one of the heirs mortgaged his share in twelve properties left by the testator. Subsequent to the mortgage, one of the mortgaged properties was sold in execution of the creditor's decree. The mortgagee afterwards brought a suit against the mortgagor and obtained a decree on his mortgage. *Held* that, as neither the direction in the will for payment of debts nor the decree in the creditor's suit created a charge on the property of the testator, the property sold in execution of the creditor's decree had been sold subject to the mortgage, and the mortgagee was entitled to execute his decree against that property. *Bazayet Hossein v. Dooli Chund, I. L. R., 4 Calc., 402*, distinguished. *RAM DHUN DHUR v. MOHESH CHUNDER CHOWDHRY* . I. L. R., 9 Calc., 406: 11 C. L. R., 565

142. ————*Civil Procedure Code, s. 234—Sale in execution of decree against deceased Mahomedan's estate—Representation of deceased by some only of his next-of-kin—Sale held to be valid.*—*V*, a Mahomedan woman, died, leaving her husband and several minor children as her representatives. In execution of a money-decree obtained against *V*, the creditor attached certain land which belonged to *V*, and made her husband and two of her children parties to the execution proceedings. The land was sold and purchased by the decree-holder. *Held*, in a suit brought by the children of *V*, to set aside the sale on the ground (*inter alia*) that some of them were no parties to the proceedings in execution, and that the others, being minors at the time, had not been represented by a guardian appointed by the Court, that the sale was valid. *KANHAMMAD v. KUTTI*

[I. L. R., 12 Mad., 90]

12. RE-SALES.

143. ————Defaulting purchaser, Liability of—*Civil Procedure Code (Act X of 1877), ss. 293, 297, 306, 308.*—The provisions of s. 293, Act X of 1877 (*Civil Procedure Code*), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immovable property, and also to re-sales held under ss 293, 306 and 308. *RAMDHANI SAHAI v. RAJPRANI KOOR*

[I. L. R., 7 Calc., 337: 9 C. L. R. 23]

SALE IN EXECUTION OF DECREE

—continued.

12. RE-SALES—continued.

144. ————Time allowed for payment of purchase-money—*Civil Procedure Code, 1859, s. 251—Discretion of officer conducting sale to allow reasonable time for payment of purchase-money.*—The provisions of s. 251 of the *Civil Procedure Code* give the officer conducting a sale of moveable property a discretion to allow the purchase-money to be paid at a reasonable time after the sale has been made. *FARREED ALUM v. SHEO CHARUN RAM* 4 N. W., 37

145. ————*Civil Procedure Code, 1859, s. 254, Computation of period under.*—In computing the fifteen days allowed for payment of the balance of the purchase-money under s. 254, Act VIII of 1859, the day of sale was excluded. *AMANEE BEGUM v. KOORDAN ALI* 3 *Agra*, 204

146. ————Failure of purchaser to pay deposit—*Civil Procedure Code, 1859, s. 254.*—*Failure to deposit, Re-sale on.*—According to s. 254, *Civil Procedure Code, 1859*, the property had to be put up again for sale on the purchaser failing to make deposit; and it was the deposit only which could be forfeited, and not any right which a decree-holder might have under his decree. In the case of a re-sale the judgment-debtor is entitled to credit for the full amount bid for his property at the time of the first sale. *JOORAJ SINGH v. GOUR BUKSH LALL* 7 W. R., 110

147. ————Defaulting purchaser—Amount leviable from defaulting purchaser—*Interest—Civil Procedure Code, 1859, s. 254.*—When the proceeds of an eventual sale were less than the price bid by a defaulting purchaser, the difference was leviable from him under s. 254, *Code of Civil Procedure*, but was levied without interest. *SOORJ BUKSH SINGH v. SREEKISHAN DOSS*

[9 W. R., 500]

See *SOORJ BUKSH SINGH v. SREEKISHAN DOSS*

[6 W. R., Mis., 126]

148. ————Failure to pay deposit—*Failure to pay balance of purchase-money—Civil Procedure Code, 1859, s. 253.*—The provisions of s. 253, Act VIII of 1859, were held applicable in a case where the re-sale did not forthwith take place on the day of the sale, but on a subsequent date. It was only on failure of a purchaser to pay in the balance of the purchase-money under s. 254, and not on failure of the purchaser to make the deposit required by s. 253, that the purchaser could be compelled to pay up the difference between the first and second sales. *AJOODHYA PERSAD v. GOPAL DUTT MISSEER*

[17 W. R., 271]

149. ————*Civil Procedure Code, 1877, ss. 293, 294—Failure to pay deposit—Re-sale—Redress against defaulter—Bidding without permission of Court—Benami purchase.*—A purchaser of property at a Court-sale who fails to pay the deposit (.5 per cent. on the purchase-money) directed to be paid by s. 306 of the *Civil Procedure Code* is a defaulting purchaser within "the

SALE IN EXECUTION OF DECREE

—continued

12. RE SALES—continued

meaning of s 213 of that Code and liable as such to make good any deficiency of price which may happen on re sale and all expenses attending the same JAVHERBHAI v HABIBHAI I L R, 5 Bom, 576

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Civil Procedure

Code 1859 s 204—A purchaser at an execution sale having defaulted to pay in the purchase money, the property was ordered to be re sold. Before however the re sale took place another sale of the same property was effected at the instance of another judgment creditor but at a lower price than on the first occasion. Held that there was no re sale such as was contemplated in ss 253 and 204 Act VIII of 1859 and that the first purchaser was not liable for the difference between his bid and the price obtained at the same sale. BISOKHA VOXXE CHOW DEHAIN v SONATUN DOSS 16 W R, 14

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Act VIII of

1859 s 254—In execution of a decree certain property of the judgment debtor was attached and put up for sale and a portion thereof was knocked down to a purchaser for a sum sufficient to satisfy the decree. The purchaser however, having made default

his decree by sale of other portions of the attached property than that originally sold. KUTRODA MAXI DAS v GOLAM ABARDARI

[18 B L R, 114 21 W R, 149]

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Civil Procedure

Code 1859 s 254—Held by PHEAR J (ANSELIN J dissenting) that if for any good reason the auctioneer at an execution sale under the Code of Civil Procedure does not accept as purchaser the person named by the highest bidder as his principal he cannot make the bidder himself purchaser against his will; he must simply declare that no sale has been effected and reopen the bidding. Held by PHEAR J (ANSELIN J dissenting) that where the Judge countersigned the certificate of sale in the following terms "H P, having made the purchase for Rs 700 stated that he made the purchase for D K" he accepted D K as purchaser in H P's bid and that when a second sale became necessary the difference of price became recoverable from the apparent first purchaser under Act VIII of 1859 s 204 and recourse should first have been had to D K who should have been allowed to show cause against an order of payment. HUREN RAM v HUR PERSHAD SINGH 20 W R, 80

Held (on appeal under the Letters Patent confirming the judgment of PHEAR J) that the party purchasing at an execution sale under the Civil Procedure Code in the character of an agent cannot be made liable as a principal, and a proceeding upon the contract under s 254 in such a case must

SALE IN EXECUTION OF DECREE

—continued

12 RE SALES—continued

be taken against the principal HUREN RAM v HUR PERSHAD SINGH 20 W R, 397

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Civil Procedure

Code 1859 s 254—Where property had been sold under a decree and the purchaser at the execution sale had made default in paying the purchase money, the remedy of the judgment creditor was not limited by s 254 of Act VIII of 1859 to a suit against the defaulting purchaser. He was entitled to recover the balance of his debt from his judgment debtor who might perhaps have his remedy against the defaulting purchaser. ANANDRAY BAEUJI v SHEKHU BABA I L R, 2 Bom, 562

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Civil Procedure

Code 1859 s 293 Defaulting purchaser answering for loss by re sale—Description of property at sale and re sale Difference of—The sale contemplated by s 293 of the Civil Procedure Code must be a sale of the same property that was first sold and under the same description and any substantial difference of description at the sale and re sale in any of the matters required to be specified by s 287 to enable intending purchasers to judge of the value of the property will disentitle the decreeholder to recover the deficiency of price under s 293. Semble—That even if the difference of description was due to the value of the property having been changed between the sale and re sale owing to causes beyond the control of any person the decree holder is entitled to claim damages against a defaulting purchaser at the first sale must proceed against him by way of suit and not by an application under s 293. BALWANTH SARAI v MOHEEP ABRAHIM SINGH [I L R, 16 Calo, 535]

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Civil Procedure

Code 1859 s 293 306—Liability of defaulting purchaser—At a sale in execution of a decree a decree holder who had obtained leave to bid was alleged to have made a bid through his agent of Rs 100,000 but he shortly afterwards repudiated the bid and did not pay the deposit. The property was put up for sale again on the following day under s 306 of the Code of Civil Procedure and was in due course knocked down for a smaller sum. The judgment debtor filed a petition under s 291 to re-

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Civil Procedure

Code s 293—Order for recovery of deficiency on re sale—Right of suit to set aside order—Certificate of amount of deficiency—Held that a suit will lie to set aside an order passed under s 293 of the Code of Civil Procedure. Held also that the fact that the certificate provided for by s 293 of the Code has not been granted will not prevent the decreeholder or the judgment debtor, as the case may be, from recovering from the defaulter the deficiency

SALE IN EXECUTION OF DECREE

—continued.

12. RE-SALES—continued.

arising on a re sale of property sold in execution of a decree, but not paid for. *TAPESRI LAL v. BROKI NANDAN RAI* . . . I. L. R., 19 All., 22

157. ———— *Civil Procedure Code (Act XIV of 1882), ss. 293, 306, 308, 309, 596*—Auction-sale—"Re-sold"—"Put up to sale." *Meaning of—Construction—Default in depositing purchase-money.* S. 293, Civil Procedure Code, extends to re-sales held under ss. 306 and 308, and there is no substantial difference between the words "re-sold" and "re-sale" which occur in ss. 308 and 309 and the words "put up again and sold" which occur in s. 306. *Ramdhani Sahai v. Raj Rani Koor, I L. R., 7 Cal., 337*, relied upon. S. 309, Civil Procedure Code, does not apply to a case in which the property is put up again and sold forthwith under the provisions of s. 306, Civil Procedure Code. *RAJENDRA NATH ROY v. RAM CHUNDER SINGH* . . . 2 C. W. N., 411

158. ———— *Re-sale by Collector—Suit to set aside sale.*—The plaintiff purchased the right, title, and interest of a judgment-debtor in a certain jumma sold in execution of a Small Cause Court decree. Subsequently the same land was sold by the same creditor in execution of another decree obtained in the Collector's Court, and the defendant purchased. In a suit to set aside the second sale,—*Held* that, when a tenure has once been sold in execution of a decree of a Civil Court, the Collector's Court has no power to put it up again as the property of the former tenant. *SAMIHADDI KHALIFA v. HARIS CHANDRA*

[3 B. L. R., A. C., 49; 13 W. R., 451 note

WAHID ALI v. SADIQ ALI

[12 B. L. R., 487 note; 17 W. R., 417

MOJON MOLLO v. DULA GHAZI KULAN

[12 B. L. R., 492 note

PRAN BANDHU SIKKAR v. SARDASUNDARI DEBI

[3 B. L. R., A. C., 52 note; 10 W. R., 434

TIRTHANUND THAKOOR v. PARESMON JHA

[10 B. L. R., 142 note; 13 W. R., 449

DOWLAT GAZI CHOWDHURY v. MUNWAR

[12 B. L. R., 485 note; 15 W. R., 341

159. ———— *Collector, Power of, to set aside sale and to order a re sale.*—A sale of certain property by the Collector in execution of a decree was set aside by the Collector on the application of the decree-holder and a re-sale took place at which the decree-holder purchased the property for Rs. 650. The purchase-money was duly paid into Court. Subsequently a third party applied to the Collector to set aside this sale, and offered Rs. 800 for the property. The Collector made an order setting aside the sale and ordering a re sale; the biddings at such re-sale to commence at Rs. 800. The re-sale accordingly took place. The decree-holder applied to the Subordinate Judge to set aside the re-sale and to confirm the previous sale to her. On reference to the High Court,—*Held* that the re-sale by the Collector was a nullity, and that the question with

SALE IN EXECUTION OF DECREE

—continued.

12. RE-SALES—concluded.

regard to the confirmation of the previous sale should be dealt with by the Subordinate Judge as if the Collector had issued no orders on the subject. *Ganpatram Motiram v. Isakji Adamji, I. L. R., 15 Bom., 322*, followed. *BAI AMPHI v. MADHAV MANOR* . . . I. L. R., 15 Bom., 694

See NARAYAN v. RASULKHAN

[I. L. R., 23 Bom., 531

13. PURCHASERS, TITLE OF.

(a) GENERALLY.

160. ———— *Title given by sale—Implied warranty of title—Caveat emptor.*—In a sale of immoveable property made by a Civil Court in execution of a decree, there is no implied warranty by the execution-creditor of the title of the judgment-debtor, the maxim "*caveat emptor*" applying. *DHONDU MATHURADAS NAIK v. RAMJI VALAD HANMANTA KAKDA* . . . 4 Bom., A. C., 114

KRISHNAPA VALAD SANTU v. PANCHAPA VALAD GURPADAPA . . . 6 Bom., A. C., 258

JUMMAL ALI v. TIRBHEE LALL DOSS

[12 W. R., 41

161. ———— *Principle of "caveat emptor."*—Where a party purchases an estate sold in execution after notice that parties other than the judgment-debtor claim rights and interests in the property, the rule of *caveat emptor* applies. *SHAHABOODEEN CHOWDHRY v. RANGUTTY CHOCKERBUTTY* . . . 9 W. R., 556

162. ———— *Ground for setting aside sale—Writ of fieri facias.*—A sale by the Sheriff to a *bond fide* purchaser for valuable consideration will not be set aside on the ground that the judgment-creditor had communicated with the Sheriff and desired him to stay the sale. The purchaser need not trace back his title beyond the *fi. fa.* *KAMINEE DOSSEE v. GOURMONEY DOSSEE*

[1 Ind. Jur., N. S., 359

163. ———— *Warranty—Caveat emptor.*—In a sale in the execution of a decree of the rights and interests of a judgment-debtor in an estate of which he is the recorded proprietor in the revenue registers, it is usual to describe such rights and interests in the sale proceedings as recorded in such registers, but such description does not amount on the part of the decree-holder or the officer conducting the sale to a warranty that such rights and interests are correctly described. Where therefore, according to the usual practice, the rights and interests of a judgment-debtor in a share of a village of which he was the recorded proprietor in the revenue registers were proclaimed for sale in the execution of a decree and sold, described as recorded and the sons of the judgment-debtor subsequently sued the auction-purchaser to recover their interests in such share and obtained a decree for such interests, and

SALE IN EXECUTION OF DECREE

—continued

13 PURCHASERS, TITLE OF—continued

the auction purchaser thereupon sued the decree holder for a refund of the purchase-money proportionate to such interests and for the costs of defending such suit—*Held* there being no fraud or misrepresentation on the part of the decree holder, or any thing of an exceptional nature showing an express or implied warranty on his part that the suit was not maintainable. *Neelkunt Sahas v Asman Matho*, 3 N W, 67, distinguished. **RAM NARAY SINGH v MAHTAB BIKER** I L R, 2 All, 828

164 ————— Caveat emptor

—*Suit to recover purchase money where judgment debtor is found to have no interest*—*K*, the plaintiff purchased a house from *H* on the 16th March 1870 and conveyed it to his wife by deed of gift on 1st

month of the house *K* then sued *G* to recover the money paid by him as auction purchaser under *G*'s decree. *Held* that the principle of "caveat emptor" applied and the defendant was not responsible for the plaintiff's mistake in purchasing and paying his money for the house without inquiring into or considering the title to it. **KSLY v SETHI & ORS** DASS

[6 N. W., 168]

185 ————— Suit to recover

purchase money—*Warranty of title*—*Caveat emptor*—*Right of purchaser*—*Civil Procedure Code 1859, ss 256-257*—The right title and interest of *G* in certain immovable property was attached and notified for sale in the execution of a money decree held by *T*. It was also attached and notified for sale in the execution of a money decree held by *S* and *R*. The same date was fixed for both sales. The officer conducting the sales first sold the property in execution of *T*'s decree and *T* purchased the property. He then sold the property in execution of the decree held by *S* and *R*, and *K* purchased the property. The Court executing the

and *K* to recover his purchase money—*Held* his distinguishing the suit from the cases in which it had been held that when the right title, and interest of a judgment debtor in a particular property is sold, there is no warranty that he has any right, title, or interest, and therefore the auction purchaser cannot recover his purchase money if it turns out that the judgment-debtor had no interest in the property—that the rule of caveat emptor did not apply, and

SALE IN EXECUTION OF DECREE

—continued

13 PURCHASERS, TITLE OF—continued

the suit was maintainable. The provisions of s 2-7 of Act VIII of 1859 apply to applications made under s 256 of that Act as to those only. *Held* therefore that inasmuch as *K* objected to the confirmation of the sale to him on the ground that the Court was not competent to confirm a sale which had by its previous order been nullified and not on any of the grounds mentioned in s 256 of Act VIII of 1859 *K* was not precluded by the terms of s 2-7 of that Act from maintaining his suit. **COURT OF WARDS v GAYA PRASAD** I L R, 2 All, 108

186 ————— Sale in execution set aside—

Second sale in execution of a different decree—*First sale subsequently confirmed in suit for that purpose*—*Title of purchasers at first sale*—*Civil Procedure Code (1859), ss 311, 312*—Certain immovable property was sold in execution of a decree but on objections being raised by the judgment debtors under s 311 of the Code of Civil Procedure the sale was set aside. After the sale had been thus set aside, the same property was again sold in execution of another decree. Subsequently in a suit brought by the purchasers at the first sale (in which suit the judgment debtors, who alone were made defendants confessed judgment) the first sale was confirmed. The purchasers at the first sale then sued the mortgagees at the second sale.

to which the purchasers

Sum, 1 L R, 11 Bom, 315 Konapa v Janardan 11 Bom, 193 Adhur Chunder Banerji v Aghore Nath Aroo, 2 C W N, 539 and Ram Chunder Sadhu Khan v Samer Ghazi I L R, 20 Calc, 25 distinguished. Zawa-ul-abbid Khan v Muhammad Asghar Ali Khan I L R, 10 All 156 L R, 15 I A, 12 referred to by STRACHY, C J. BANKS LAL v JAGAT NARAIN BANKS LAL v DAMODAR DAS I L R, 22 All, 168

(6) CERTIFICATE OF SALE

167 ————— Position of purchaser with

right to a conveyance in virtue of a contract; he

SALE IN EXECUTION OF DECREE —continued.

13. PURCHASERS, TITLE OF—continued.

does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance, the property in the estate purchased does not, having regard to rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property; and therefore as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property. *JOHUR MULL KHOORNA v. TARANKISTO DEB* . . . I. L. R., 10 Cal., 252

168. ——— Title of purchaser without certificate—*Possession—Unregistered certificate of sale—Valid title—Codes of Civil Procedure, Acts VIII of 1859 and XIV of 1882.*—A purchaser of immovable property at a Court-sale under the Civil Procedure Code, Act VIII of 1859, who has been put into possession by the Court, has thereupon a complete title against all persons bound by the decree, notwithstanding that he has no certificate of sale, or one only which has not been registered. *Rajkishen Mookerjee v. Radha Madhub Holdar*, 21 W. R., 349, followed. *Quere*—How far the above ruling will be affected by the language of s. 316 of Act XIV of 1882. *SHIVRAM NARAYAN v. RAYJI SAKHARAM* . . . I. L. R., 7 Bom., 254

169. ——— Suit to recover possession of property purchased.—*Semle*—If it is admitted that the plaintiff purchased immovable property at a Court-sale, he can recover without producing the certificate of sale. *SADAGOPA EDINTARA MAHA DESIKA SWAMIAH v. JAMUNA BHAI AMMAL* [I. L. R., 5 Mad., 54

170. ——— Evidence of title of purchaser—*Sale of immovable property—Confirmation of sale.*—The order confirming a sale of immovable property in execution of a decree is sufficient to pass the title in the property to the purchaser, and its production is sufficient evidence of the purchaser's title. The production of the sale certificate is not essential. *Doorga Narain Sen v. Baney Madhub Mozoomdar*, I. L. R., 7 Cal., 199, followed. *TARA PRASAD MYTEE v. NUND KISHORE GIRI* [I. L. R., 9 Cal., 842; 12 C. L. R., 448

171. ——— Completion of title of purchaser—*Payment of purchase-money and confirmation of sale—Civil Procedure Code, s. 316.*—Under s. 316 of the Civil Procedure Code (Act X of 1877), the title of a purchaser at a Court-sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court. When the sale is admitted, production of a certificate is not necessary to entitle the purchaser to maintain a suit. *Padu Malhari v. Rakhmai*, 10 Bom., 435;

SALE IN EXECUTION OF DECREE —continued.

13. PURCHASERS, TITLE OF—continued.

Lalbbhai Lakhmias v. Naval Mir Kamaludin Husen, 12 Bom., 247; and *Harkisandas Narandas v. Rai Ichha*, I. L. R., 4 Bom., 155, distinguished. *NAIGAR TIMAPA v. BHASKAR PARMATA* [I. L. R., 10 Bom., 444

172. ——— *Sale in execution of decree of Revenue Court—Delivery of possession—Act XVIII of 1873 (N. W. P. Rent Act), s. 76—Act XII of 1881 (N. W. P. Rent Act), s. 172.*—Property sold in execution of a decree of a Revenue Court vests in the purchaser on completion of the sale and payment of the full price. In order to perfect his title, it is not necessary that he should obtain a sale certificate or should be put into possession by the Collector. *Held* therefore that a suit by a purchaser at a sale in execution of a decree of a Revenue Court for possession of the property was maintainable, although his sale certificate might be an invalid document and the Collector had not put him into possession. *MUZAFFAR HUSAIN v. ALI HUSAIN* [I. L. R., 5 All., 297

173. ——— Purchaser at execution sale—*Suit for possession of property—Proof of title—Act VIII of 1859, ss. 257, 259.*—*Held* that it was not incumbent on a purchaser at an execution-sale under Act VIII of 1859, which was confirmed in his favour under that Act, when suing for possession of the property, to produce a sale certificate, but it was competent for him to prove his purchase *aliunde*. The confirmation of the sale in his favour was *prima facie* evidence of his title to the property, and was sufficient to pass such title to him, of which a certificate, if afterwards obtained by him, would merely be evidence that the property had so passed. *Doorga Narain Sen v. Baney Madhub Mozoomdar*, I. L. R., 7 Cal., 199, referred to. *JAGAN NATH v. BALDEO* . . . I. L. R., 5 All., 305

KALLEE DASS NIOGEE v. HUR NATH ROY CHOWDHURY . . . W. R., 1864, 279

174. ——— Purchasers at successive execution sales—*Purchaser at second sale obtaining certificate of sale and possession of property prior to grant of certificate to purchaser at first sale—Priorities.*—On the 9th December 1876 the plaintiff purchased a house at an auction-sale in execution of a decree against the owner, one S. The sale was confirmed on the 9th January 1877, but the certificate of sale was not issued until the 16th June 1880. On the 28th January 1880 the defendant purchased the same house at a sale in execution of a money-decree against S. That sale was confirmed on the 28th February 1880, and a certificate was issued on 20th March 1880. The defendant got possession from the judgment-debtor in April 1880. The plaintiff now sued for possession. It was contended for the defendant that, having completed his title under the auction-sale and obtained possession before the plaintiff had taken out his certificate, he had acquired a better title than the plaintiff. *Held* that the plaintiff was entitled to recover. By his prior purchase he had obtained an equitable interest

SALE IN EXECUTION OF DECREE

—continued

13 PURCHASERS, TITLE OF—continued

in the property, although he had not obtained a sale certificate. The defendant therefore purchased subject to the plaintiff's equitable interest, and that title having subsequently been perfected by the issue of the certificate, the plaintiffs were in a position to sue for possession. **YESHWANT BABURAY v. GOVIND SHANKAR** I. L. R., 10 Bom., 458

175. ———— *Certificate of sale granted to the representative of deceased purchaser—Civil Procedure Code (1882), s. 316.*—When a sale in execution has become absolute, the Court can, under s. 316 of the Civil Procedure Code (Act XIV of 1882) grant the certificate prescribed therein to the representatives of a deceased purchaser. **IN RE VINAYAK NARAYAN INRE DATTA-THAYA KRISHNA DATAR** I. L. R., 24 Bom., 120

176. ———— *Period from which title of purchaser dates—Date of sale—Date of confirmation of sale.*—The title of a purchaser at a judicial sale which has been confirmed and been made absolute relates back to and takes effect from, the date of the sale, and does not commence only on the date of the confirmation of the sale. **LUCHEMIN NATH v. MAHA-BAJA OF VIZIANAGRAM** T N W., 310

177. ———— *Confirmation of sale—Liability of purchaser for Government revenue.*—The defendant became a purchaser at an execution sale of a share of certain property, of which the plaintiff held another share partly as zamindar and partly as patnidar. The sale took place in September 1872 but the defendant did not obtain possession until confirmation of the sale in May 1873. Between the date of the sale and the confirmation a

confirmation of the sale, the share purchased by the defendant must be considered to have vested in her from the date of the sale, and therefore she was liable for the amount of Government revenue in respect of her share which became due between the date of the sale and its confirmation. **BYRUB CHUNDER BUNDOFADRYA v. SOUDAMINI DABKE** [I L. R., 2 Cal., 141]

178. ————

as s. 308 and 309 of the Civil Procedure Code (Act VIII of 1859) corresponding with ss. 318 and 319 of the Civil Procedure Code (Act X of 1877) accrued

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—continued.

13 PURCHASERS, TITLE OF—continued

chaser counted from the former date. **BASAPA v. MARYA** I. L. R., 11 Bom., 433

it is not even required to be in writing. **HIRA ANBAIDAS v. THEKCHAND ANBAIDAS** [I L. R., 13 Bom., 670]

180. ———— *Unregistered certificate of sale—Interest of purchaser—Second sale of same*

1880, which was registered on the 13th of the same month

same

1875,

mortgagee against the said C. The defendant had obtained a certificate of sale and was put into possession, but had not then registered the certificate. He subsequently obtained another certificate, which was registered in June 1892. In a suit by the

certificate, which was registered, sufficiently proved that the sale to him had been confirmed. **CHINTA-MANRAV NATH v. VITHABAI** I. L. R., 11 Bom., 588

181. ———— *Proof of title without pro-*

made by the Court. **VELAN v. KUMARASAMI**

[I L. R., 11 Mad., 296]
182. ———— *Title of auction purchaser without certificate of sale—Confirmation of sale,*

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SALE IN EXECUTION OF DECREE

—continued.

18. PURCHASERS, TITLE OF—continued.

Effect of.—The plaintiff as an agriculturist sued the defendant to redeem certain land mortgaged to him with possession by her deceased husband. The defendant (the mortgagee) pleaded that he had bought the mortgagor's interest in the property at an auction-sale held in execution of a decree obtained against the mortgagor (the plaintiff's husband), and that therefore the right to redeem was gone. The defendant was, however, unable to produce a certificate of sale, and the Subordinate Judge held therefore that he had failed to prove his title, and accordingly directed that the mortgage account should be taken under the Dekkan Agriculturists' Relief Act (XVII of 1879). The defendant afterwards found his sale certificate, and obtained a review of the above order, but on review the Subordinate Judge confirmed his decision, holding that, as the sale certificate was unregistered, it could not be received in evidence. The defendant then obtained a fresh certificate, registered it, and renewed his application to the Subordinate Judge, who reversed his previous order, and rejected the plaintiff's claim. The plaintiff appealed to the District Judge, who reversed the lower Court's order and remanded the case. On appeal by the defendant to the High Court,—*Held* that the order of the District Judge should be discharged. A sale certificate was not necessary for the purpose of establishing the defendant's title to the property as against the plaintiff. Where property has been sold in execution of a decree, a party to the suit in which the decree has been passed, or his representative, cannot, after the sale has been confirmed, dispute the title of the purchaser at the sale. The order confirming the sale completes the title of the latter as against the former. *KHUSHAI PANACHAND V. BHIMABAI*

[I. L. R., 12 Bom., 589]

183. — Statement in certificate of sale—*Evidence*—*Suit to enforce charge against purchaser.*—A statement in a sale-certificate, granted by a Court, that the purchase is subject to a charge, is not conclusive evidence against the purchaser, when it is sought to enforce the charge by suit. *RAMACHANDRA JOISHI V. HAZI KASSIM*

[I. L. R., 16 Mad., 207]

184. — Purchasers at successive execution-sales—*Title obtained by first purchaser*—*Certificate of sale obtained by second purchaser before certificate obtained by first purchaser*—*Priority*—*Civil Procedure Code (Act XIV of 1882), s. 316*—*Limitation*—*Confirmation of sale.*—On 27th February 1886 the plaintiff purchased certain land at a Court-sale held in execution of a decree. On the 10th March 1886 the same property was put up for sale in execution of another decree, and purchased by the defendant. The sale to the defendant was confirmed on 3rd July 1886, and the sale to the plaintiff not until the 21st July 1886. Certificates of sale were issued to both plaintiff and defendant on the same day, *viz.*, on the 2nd September 1886, and on the 14th February 1887 the defendant was put in possession. In 1889 the plaintiff brought this suit to recover possession. The defendant relied on s. 316

SALE IN EXECUTION OF DECREE

—continued.

18. PURCHASERS, TITLE OF—continued.

of the Civil Procedure Code. He contended that, as under that section the title of a purchaser at a Court-sale vests at the date of the confirmation of the sale to him, his (the defendant's) right was superior to that of the plaintiff, inasmuch as the sale to him was confirmed on the 3rd July 1886, while the sale to the plaintiff was not confirmed until afterwards, *viz.*, on the 21st July. *Held* that the plaintiff was entitled to recover. By his prior purchase he had acquired an equitable or inchoate title to the property which was subsequently perfected by the certificate of sale. Nothing therefore passed to the defendant under the second sale. The words "the title to the property sold" in s. 316 of the Code of Civil Procedure mean the full perfected title arising on the sale becoming absolute. It is that title which under the section does not vest in the purchaser until confirmation. That provision, however, need not necessarily be construed as destroying any lesser interest which arises by reason of general equitable principles. *Quare*—Whether the provision in s. 316 as to the date at which the title of the purchaser is to vest does not apply only as between the parties to the suit and persons claiming through or under them. *Per JARDINE, J.*—The reference to parties and persons claiming under them would be surplusage if the Legislature had intended the addition to apply to third parties. *DAGDU V. PANCHAMSING*

[I. L. R., 17 Bom., 375]

185. — Title of auction-purchaser who has not obtained a certificate of sale—*Civil Procedure Code (1882), s. 316.*—Although the auction-purchaser at a sale held in execution of a decree may not obtain a full title until a certificate has been granted, this must not be considered as necessarily destroying any lesser interest which arises by reason of general equitable principles. *Dagdu v. Pancham Singh Gangaram, I. L. R., 17 Bom., 375, and Het Ram v. Baldeo, Weekly Notes, All. (1894), 54, approved. CHIDDO V. PIABI LAL*

[I. L. R., 19 All., 188]

186. — Certificate of sale—*Civil Procedure Code (Act XIV of 1882), s. 316*—*Auction-purchaser*—*Confirmation of possession*—*Title of auction-purchaser*—*Suit for damages for cutting trees.*—An auction-purchaser under the Code of Civil Procedure has a good equitable or inchoate title to the property sold, and when the sale certificate is actually granted, it makes the title absolute and makes that title relate back to the date of the sale, so as to warrant him when the sale is confirmed and a certificate granted under s. 316, Civil Procedure Code, in bringing an action for damages for any injury to that property, committed before the confirmation of the sale. So where the defendant cut the trees that stood on a property before the confirmation of its sale,—*Held* that the plaintiff, who is the auction-purchaser of the property, can bring a suit after the date of the confirmation of sale for damages against the defendant for cutting the trees. *Dagdu v. Pancham Singh Gangaram, I. L. R., 17 Bom., 375, and*

SALE IN EXECUTION OF DECREE

—continued

13 PURCHASERS, TITLE OF—concluded.

Prangour Mozoomdar v Hemanta Kumar Debys,
I L R 12 Calc, 557, referred to ADRIE CHUN-
DER BANERJEE v AGHORE NATH ARGO

[2 C. W. N., 589]

14 DISTRIBUTION OF SALE PROCEEDS

187. — Civil Procedure Code,
1882, s 295 (1859, ss 270, 371)—Effect of, on
rights by contracts—Object of procedure under
those sections—The purport of ss 270 and 271 of
Act VIII of 1859 (with which s 295 of Act X of 1877

was not to alter or limit the rights of
debtor
standing
there is
which
distri-
bution

SATOODA KHANDAN I L R, 4 Calc, 29

RAJCHUNDER SHAHA v HURMOHUN ROY
[22 W. R., 95]

188 — (1859, s 270)—Pro-
perty not sold in execution of decree—S 270 of the
Civil Procedure Code did not apply to a case in which
property has not been sold in execution of a decree
BISHEN CHUNDER SUMRA CROWDERY v MUN
MOHINEE DABEE S W R, 501

BALAJI RAMCHANDRA v GAJANAN BABAJI
[11 Bom, 159]

189 — Civil Procedure
Code (Act XIV of 1882), s 295, 310A—Bengal
Tenancy Act (VII of 1885), s 174—Sale in execu-
tion of decree—Deposit by judgment debtor—Rate-
able distribution—S 295, Civil Procedure Code, does
not apply to deposit made by the judgment debtor
either under s 174, Bengal Tenancy Act, or under
s 310A of Civil Procedure Code BIRAJI LALL PAUL
v GOPAL LAL SEAL I C W. N., 685

190 — Imperfect
attachment of immovable property—Private aliena-
tion after such attachment—Civil Procedure
Code, s 274 276, sch IV, No 141—A judgment

debtor should be considered as insolvent if he is in the

the same judgment debtor preferred applications
purporting to be made under s 295 of the Civil
Procedure Code, and praying that the proceeds of
the sale of the property might be rateably divided
between themselves and the attaching creditor The
Court refused to remove the attachment until these
creditors had been paid It was found that the sale
by the judgment debtor was a bond fide transaction,
entered into for valuable consideration Held that,
inasmuch as no order for attachment of the property
was passed in favour of the decree-holders in the
manner provided by s 274 of the Civil Procedure

SALE IN EXECUTION OF DECREE

—continued

14 DISTRIBUTION OF SALE PROCEEDS

—continued

tion
of
vero
was
was
valid, and that execution of the decrees could not
take place Also per MAHMOOD, J—While s 395
of the Code of Civil Procedure does not apply to judgment credi-

to GANGA DIN v KUSHALI I L R, 1 All, 104

191. — Rights created
by s 295, how affected by insolvency and vesting
order—Insolvent Act (11 & 12 Vict, c 21),
s 49—An order under s 295 of the Civil Procedure
Code affects only interests existing at the time The
insolvency of the debtor introduces a new state of

v Russick Lall Mitter, I L R, 15 Calc, 202,
cited HOWATSON v DUBREANT

[I L R, 27 Calc, 851
4 C W. N., 610]

192. — Rateable dis-
tribution—Assets realized "by sale or otherwise"
—The words of s 295 of the Code of Civil Proce-
dure, "assets realized by sale or otherwise in execu-
tion of a decree," provide only for a case where, by

was should be considered as insolvent if he is in the
other process of execution provided for by the Civil
Procedure Code SEW BUX BOGLA v SHIB CHUN-
DER SEN I L R, 13 Calc, 225

193. — "Assets"—
Moneys paid into Court by sale or otherwise in exe-
cution of a decree are assets from the moment of their
payment into Court, and are available, under s 295
of the Code of Civil Procedure (Act X of 1877), for

194. — "Whenever
assets are realized" Meaning of—Deposit of 25
per cent of purchase money—Assets—The words
"whenever assets are realized" in s 295 of the Code
of Civil Procedure really mean "whenever assets
are so realized as to be available for distribution
among the decree-holders" The 25 per cent of the
purchase-money deposited at a sale in execution of
a decree is not "assets" within the meaning of

SALE IN EXECUTION OF DECREE
—continued.
14 DISTRIBUTION OF SALE-PROCEEDS
—continued.

202 *Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Rateable distribution of assets—Certain movable property passed by a Subordinate Judge in his Small Cause jurisdiction of which a part was afterwards sold. In was at first attached in execution of a money decree executed into by the trustees under a liberty reserved to them by the Court, and the fact that the Court sanctioned it made no difference in this respect. It did not purport to be a sale of any right, title, or order of the 14th September 1835 was not a sale in execution, but a sale in pursuance of a private agreement entered into by the trustees and the fact that the Court sanctioned it made no difference in this respect.*

203 *Rateable distribution of assets—Transfer of application for execution.—Where property attached in execution of a decree of a Subordinate Judge in his Small Cause jurisdiction of which a part was afterwards sold. In was at first attached in execution of a money decree executed into by the trustees under a liberty reserved to them by the Court, and the fact that the Court sanctioned it made no difference in this respect. It did not purport to be a sale of any right, title, or order of the 14th September 1835 was not a sale in execution, but a sale in pursuance of a private agreement entered into by the trustees and the fact that the Court sanctioned it made no difference in this respect.*

204 *more than one judgment-debtor. Decree Code (Act of a decree of a Plaintiff's Court, the plaintiff attached*

205 *the Small Cause Court Judge subsequently the defendant, who held another decree against the same judgment-debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under a 273 of the Civil Procedure Code, to inquire whether the plaintiff was entitled to any priority over the second attaching creditor, and having decided that question in the negative, divided the sale-proceeds ratably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale proceeds so paid to him,—Held that a 205 of the Civil Procedure Code had no application, inasmuch as the Plaintiff had not applied to the Small Cause Court*

SALE IN EXECUTION OF DECREE
—continued.
14 DISTRIBUTION OF SALE PROCEEDS
—continued.

202 *Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Rateable distribution of assets—Certain movable property passed by a Subordinate Judge in his Small Cause jurisdiction of which a part was afterwards sold. In was at first attached in execution of a money decree executed into by the trustees under a liberty reserved to them by the Court, and the fact that the Court sanctioned it made no difference in this respect. It did not purport to be a sale of any right, title, or order of the 14th September 1835 was not a sale in execution, but a sale in pursuance of a private agreement entered into by the trustees and the fact that the Court sanctioned it made no difference in this respect.*

189. *Right of rival decrees holder to share decree of another is barred.—*
190. *who took out execution does not share in the distribution of the sale-proceeds. KADIA GORDIAN SHAR c. COZKENS 15 W. R. 319*

201. *Decree of Small Cause Court—Judge sitting as Small Cause Court and as Subordinate Judge.—The Judge of a Court of Small Causes sitting in the exercise of his powers as a Subordinate Judge is not one and the same Court, but two different Courts. Held therefore that the holder of a decree made by the Judge of a Small Cause Court in the capacity of Subordinate Judge, who had applied to such Judge acting in the capacity of a decree made by such Judge in the capacity of Judge of such Small Cause Court, HINDAVY BAKY v. HINDAS 1 I. L. R. 3 All. 710*

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—continued.

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—continued.

Judge to execute her decree, and it had never been transferred to that Court for execution; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge; and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree sought. *Quære*—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order. **GORE MAN ACHARY v. ACHONA BIKAR**. **I. T. R., 7 Cal., 553; 9 C. T. R., 395**

2505. *Decree in Small Cause suit and decree in regular suit in Subordinate Judge's Court.*—Two decrees were passed against the same defendant in the Court of a District Munsif and on the Small Cause side of a Subordinate Judge's Court in the same district respectively. The holder of the decree in the Small Cause suit attached and brought to sale the judgment-debtor's interest in a benami fund. The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Judge's Court directly, and not through the District Court. *Held* that the order for rateable distribution was right. **KATU v. VIKRAMA**. **I. T. R., 15 Mad., 345**

2506. *Rateable distribution of assets—Civil Procedure Code, 1877, s. 266—Attachment of salary.*—The salary of a karkun, who was employed in the Second Class Subordinate Judge's Court of Ankleswar, was attached, in execution of a decree of the First Class Subordinate Judge's Court of Surat, by an order issued by the Surat Court, directing the Ankleswar Court to stop and remit every month a moiety of the said karkun's salary to itself (the Surat Court), until satisfaction of the decree. While the decree of the Surat Court was thus in course of execution, another judgment-creditor of the karkun, who had obtained a decree in the Ankleswar Court, applied to it for a rateable distribution of the moiety between himself and the Surat decree-holder, under s. 295 of the Civil Procedure Code, Act X of 1877. *Held* that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Ankleswar Court, to which the order of attachment was sent as the head of a department, or as "the officer whose duty it was to disburse the salary," and not as a Court executing the decree

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—continued.

of another Court. **KRISHNASWAMY v. CHANDRA-SHANKAR**. **I. T. R., 5 Bom., 198**

2507. *Rateable distribution of assets—Proceeds of sale under decrees of Small Cause Court.*—Certain movable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge accordingly attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realized by the Small Cause Court, under s. 295 of Act X of 1877. *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court. **JERNA MADHAYI v. NARAYAN ABHAYJI**. **I. T. R., 4 Bom., 472**

2508. *Rateable distribution of assets realized in execution.*—*H.* obtained a decree against *A.* and another in the High Court under its original civil jurisdiction. In execution of that decree, *A.*'s property was attached by the Second Class Subordinate Judge of Bijapur, and an order for sale was made. *D.* obtained a decree against *A.* alone in the Court of the First Class Subordinate Judge of Sholapur, and obtained from that Court an order for the attachment and sale of *A.*'s property, which was already attached by the Second Class Subordinate Judge of Bijapur. He then applied to the Second Class Subordinate Judge of Bijapur for rateable distribution of the assets realized under s. 295 of the Civil Procedure Code (Act XIV of 1882). The Second Class Subordinate Judge of Bijapur rejected the application, and he thereupon applied to the High Court. *Held*, following *Jetha v. Nageswari, I. T. R., 4 Bom., 472*, and *Krishnaswamy v. Chandraswamy, I. T. R., 5 Bom., 198*, that *D.* was not entitled to share in the assets. **RAHIMTULIA NURMAHOMED KHOLA v. RAHIMTULIA NURMAHOMED KHOLA**. **I. T. R., 18 Bom., 456**

2509. *Rateable distribution of assets realized in execution of decrees of Small Cause Court and High Court—Execution-proceedings in Small Cause Court transferred to High Court—Rateable distribution of assets realized in execution.*—The plaintiffs obtained a decree in the High Court against the defendant, and in execution attached goods in the defendant's shop. These goods, however, were already under attachment in execution of certain decrees obtained in the Small Cause Court against the defendant. On the 4th September 1895, by an order of the High Court made on the application of the plaintiffs, the execution-proceedings in the Small Cause Court suits were transferred to the High Court, and

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*DZNNI2H03—

to repay the surplus to the other decree holders, and that B had been overpaid, and was liable, under s. 270, and was entitled to payment in full, the person who came under the Code of Civil Procedure, as soon as it was ascertained that the fund might be made use of, first applied for the sale of it, was established a preferential claim *Held* that K, who, although he was awarded among the other creditors. One of them brought a suit to establish a preferential claim *Held* that K, who, as soon as it was ascertained that the fund might be made use of, first applied for the sale of it, was established a preferential claim.

MRS DAVEN
NAVATIL DAT SINGH NAVATIL DAT & ROOBY KANT.
GURU CHANDER SINGAR CHOWHARY & SINGH

22 W. R., 466

subsequently (under the rules of the Sheriff's office)

• • • • • I. I. R., 20 BOM, 377

Decree holder in execution of his decree against the
same judgment debtor. THEOXYMATHA CHERIT
I. T. B., 4 Mad, 388

First, an application for association regarding a common interest must be made before the completion of the necessary amendments to the declaration. If no ground for declaring such a common interest exists, the declaration is not subject to amendment. The circumstances under which the declaration is subject to amendment are as follows:

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Reliable
 portion of assets. Preliminary to right to share in—
 several decree-holder executing various judgments,
 for the most part of very ancient date, against the
 estate of one H. were in contest in respect of the
 proceeds of a Government promissory note, which had
 long been under attachment, but was eventually sold
 with an expression of the High Court's opinion upon
 appeals presented by two of the decree-holders. If the

and S, who were acting jointly in execution, and the

S. C. is the father of the petition of liberty
MARVA GRAY BARNDOCK
[2 B. L. B., A. C., 217]

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 [H. W. II.]
 MANDATE OF BUREAU & HANDBOOK
 them, was held to have been made without jurisdiction
 of the court, and the order was reversed. The
 court then directed the parties to appear before
 the court on the 10th day of the month of
 April, 1904, for the purpose of hearing the
 appeal. The court then directed the parties
 to appear before the court on the 10th day
 of the month of April, 1904, for the purpose
 of hearing the appeal. The court then directed
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 10th day of the month of April, 1904, for
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 for the purpose of hearing the appeal. The court
 then directed the parties to appear before the
 court on the 10th day of the month of April,
 1904, for the purpose of hearing the appeal.

holders—*Climax* under same decree—S 270, Act VIII of 1893, applied only to rival decree-holders claiming under different decrees, and not to persons claiming under the same decree. *And* Art 2, MINNOC HYS 1893

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 execution of decrees—An application was made for
 execution of a decree for money against *B* and
 another person and was refused. Certain
 immovable property belonging to *B* was sold in
 execution of the first decree, the assets which were
 realized by such sale being insufficient to satisfy the

BAK & CHIBAKI Ltd. : I. L. R., 3 All, 679

318. *Execution of sale proceeds—Same judgment-debtor—Where a judgment-debtor has obtained execution of two judgment decrees, A and B, and in execution of that decrees has attached and caused to be sold goods properly belonging to such judgment-debtor, another judgment creditor holding a decree against A alone, who has also applied for execution, is not entitled to claim under the provisions of s. 295 of the Civil Procedure Code to be regarded in the sale-proceeds, the decree not being against the same judgment-debtor, and Court having no power in execution proceedings.*

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Shunbhoo Nath Poddar v. Lucky Nath Day, I. T. R., 9 Cal., 920; Nimbai Tulsiaram v. Vidya Venkata, I. T. R., 16 Bom., 688, referred to. That it is only the unsatisfied portion of the decree that ought to be taken into account in a question of rateable distribution, there being no reason why any amount should be set apart in favour of a decree-holder in proportion to any sum covered by his decree which has already been realized. SARAB CHANDRA KUNDU v. DORAI CHAND SEAT . 3-C. W. N., 368

220. *Rateable distribution of sale-proceeds—Same judgment-debtors—Separate and joint judgment-debtors—Marshaling of assets between decree-holders—Decree of Small Cause Court, Transfer of.—*The plaintiffs in this suit obtained a decree against all three defendants *A, B, and C*. In execution of such decree, they attached two sets of securities: (i) municipal bonds, the joint property of *B* and *C*; and (ii) Government loan notes, the property of *C* alone. These were sold by the Sheriff, but, before they were so sold, the holders of decrees in two other High Court suits came in and applied to the High Court for execution of their decrees, which decrees were against *C* alone. These last-mentioned decree-holders now claimed to participate rateably with the plaintiffs in this suit: in the realized proceeds of both the above-mentioned securities. The plaintiffs in this suit contended that such decree-holders, having decrees only against *C*, were not claiming against "the same judgment-debtors" as themselves within the meaning of s. 295 of the Civil Procedure Code. *Held* that, as regards property of *C*, the plaintiffs' decree and the other two decrees were all decrees "against the same judgment-debtors," and that therefore, as regards that fund, all three sets of decree-holders were equally entitled and must share therein rateably. *Held* further that, as regards the other fund, the proceeds of the property of *B* and *C* only, the plaintiffs in this suit were entitled thereto, since the other decree-holders had no decrees against *B* and *C*, and therefore not "against the same judgment-debtors," as was the decree of the plaintiffs. *Held* further that the plaintiffs having two funds to proceed against, whilst the other decree-holders had but one of these two, the equitable principle of marshalling should be applied, and the plaintiffs required to satisfy themselves as far as possible out of the fund not available to the other decree-holder, before they had recourse to the other fund common to all, and as regards the latter fund the plaintiffs should claim against the same only as creditors for the then unsatisfied balance of their debt rateably with such other decree-holders. *Shunbhoo Nath Poddar v. Lucky Nath Day, I. T. R., 9 Cal., 920, and Deboki Nundun Sen v. Hart, I. T. R., 12 Cal., 294, considered and followed.* Another holder of a decree—a Small Cause Court decree passed against all three debtors *A, B, and C*—had previously to the said attachments by the Sheriff in this suit himself attached the same securities through the

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217. *SEN v. HART* . I. T. R., 12 Cal., 294—
who has obtained a decree against the same judgment-debtor and other persons. DEBOKI NUNDUN was to come in and share rateably with a person for money against a single judgment-debtor is entitled to lay down that a person who has obtained a decree against a person who has obtained a decree against the same judgment-debtor is entitled to share rateably in sale-proceeds must be bond fide decree-holders.—The words "decree-holders" or "persons holding decrees for money against the same judgment-debtor" in s. 295 of the Code of Civil Procedure signify bond fide decree-holders. A Court is bound, in cases falling within this section, to satisfy itself whether the claimants are bond fide decree-holders within the meaning of the section; and where it is unable to satisfy itself as to the bond fides of the claim, the Court should exclude such claimant from the distribution of assets. [I. T. R., 11 Cal., 42

218. *Rateable distribution—Creditor with joint decree.—*Where property belonging to *A* has been attached under a decree, and other decree-holders than the attaching creditor have applied before realization of assets to participate in the sale-proceeds, and amongst them a creditor who has obtained a decree against *A* and *B*, such latter creditor is entitled, under s. 295 of the Civil Procedure Code, to share in the proceeds of the sale of *A*'s property. SHUNBHOO NATH PODDAR v. LUCKY NATH DAY . I. T. R., 9 Cal., 920 .
219. *Decree, execution of, by several judgment-creditors against one and the same judgment-debtor—Rateable distribution.—*The plaintiff obtained a decree against two persons *P* and *S* for a sum of money, and one of the defendants obtained another decree against *P* and *R*, the latter being the father of *S*, and some other defendants also obtained decrees against all those three persons. The plaintiff now brought a suit claiming to have a share of the amount realized by the sale of the properties of *P*, the common judgment-debtor under the three decrees, by rateable distribution for the liquidation of his decree, not a farthing of which was realized, although the decrees of the defendants had been partly realized from judgment-debtor other than *P*. It appeared that the properties of *P* were specified in the execution proceedings and in the sale proclamation separately and the amount realized by the sale of his properties was separately stated. *Held* that no question of the ascertainment of the shares of the judgment-debtors or of the application of the "principle of marshalling" arose in this case, and that the plaintiff was entitled to ask for a refund of the money paid to the defendants, under s. 295 of the Code of Civil Procedure, out of the assets realized by the sale of the properties of *P*. DEBOKI NUNDUN SEN v. HART, I. T. R., 12 Cal., 294, distinguished.

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334. Sale in execution for creditor who has not attached.—Where the

sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment creditor who has attached the property, another creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of a 29a of the Civil Procedure Code. *Messrs LAT POORIE & SING PERSHAD MARDI* [I. L. R., 7 Cal., 34]

S. C. *Messrs LAT POORIE & MOUNSARD DUTT* 8 C. I. R., 869

326. Rateable distribution.—Civil Procedure Code, 1859, s. 266.—One C

obtained a decree against L and M for rent due from them, and, in execution thereof, applied for the attachment and sale of two houses, with their contents and the ground underneath them (in respect of

under C's decree for rent. On the realization of the sale-proceeds, D applied, under s. 266 of Act X of 1877, for a rateable proportion of the assets realized by the sale of M's property in execution of C's decree. Held that D was not entitled to such rateable proportion of the assets. *MANKHAT & LAKSHI MANSING* [I. L. R., 4 Bom., 429]

the proceeds of such sale the amount of Court fees I would have had to pay had he not been allowed to sue as a pauper, the principle that Government takes precedence of all other creditors not being applicable to an exception in the case of lien-holders. The decision in *Ganpat Putaya v Collector of Kamau, I. L. R., 1 Bom., 7*, applied in this case. *Collector of Moudanabad & Alimnabad Dutt* [I. L. R., 2 All., 186] (1859, s. 271)—270—*partly sold subject to mortgage*—The proviso of s. 271 of Act VIII of 1859 was intended to apply

Small Cause Court. He did not, however, at any time get his decree transferred to the High Court. He now came in in these execution-proceedings and

share in either fund *Mullajir & Mullajir, I. L. R., 6 Mad., 357*, followed. *Nirmala Tirumala & VADIA PANKAJI* [I. L. R., 16 Bom., 683]

321. Attachment by Small Cause Court.—Transfer of

decree to superior Court.—Practice of the Calcutta High Court in favour of the principle of rateable distribution amongst all the attaching creditors, without any such condition as the transfer of the execution proceedings to the superior Court, adopted

and held supported by the cases of *Gopie Nath Acharya v Acharya Bibee, I. L. R., 7 Cal., 653*, *Dykanat Nath Shaha v. Jagendra Narayan Kar, I. L. R., 12 Cal., 688*, and *Bhagwan Dass Bogla v. Banko Behari Dasgupta, suit 130 of 1883*, unreported. *Mutialgi & Nagak v. Mullajir, I. L. R., 6 Mad., 857*, and *Nimajir, Telimam v. Vedia Chak & Alankar* [I. L. R., 21 Cal., 200]

HAN DUTAT DAS MARMAR & ANANDAM MARMAR 2 C. W. N., 126

320. *Saminivas & KANDARAI* [I. L. R., 6 Bom., 570]

so that the decree-holder, who has been permitted under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree-holders, and will not be allowed to set off the purchase-money against the amount due to him on his decree

323. *Decree-holder for unascertained means provision—Right of—Holder of—Civil Procedure Code, 1859, s. 294*—The holder of a decree for unascertained means profits who has applied to the Court to ascertain the amount thereof

within the amount payable under s. 255 to attach immovable property under a decree, is not rateably

both sections the receipt to be given by the decree-holder, who has obtained leave to bid from the Court and has purchased the property sold, can only be accepted for so much of the judgment-debt as the assets applicable to its discharge may suffice to

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KANDARAI
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got an order under his decree upon the bill of exchange for payment to him of the surplus sale-proceeds lodged in Court to the credit of S's suit, and for sale of certain of the properties, other than the mortgaged property, which he had attached. Under this order the money was paid out to the plaintiff, and the properties were advertised for sale. MAD-ENBSON, J., having, on an application by A, set aside this order and directed that the plaintiff should refund into Court the money paid out to him, and that the sale should be stayed, the Court on appeal made the plaintiff undertake to pay into Court the mortgage-money with interest if the same should be received by him from the defendants in the mortgage-suit. BANK OF BRISBANE v. NUNDAHAL DOSA [14 B. L. R., 509]

231. *Satisfaction of mortgage-lien out of surplus proceeds.*—Where seven different properties belonging to the same mortgagor had been hypothecated to three different persons, and all of them sued upon their bonds and obtained decrees which were followed by simultaneous sales in execution,—*Held* that, as all the properties were sold at the instance of all the mortgagors for the satisfaction of their decrees, and therefore of their respective mortgage-liens, and the decrees sale-proceeds in the order in which the liens on the properties had been created. GORAN SING v. KRISHA LAL [25 W. R., 187]

232. *Provisions.—Liens subject to mortgage.*—Where two mortgagors, in execution of their several decrees, attached the same property, of which a moiety without further specification was respectively mortgaged to each of them, and subsequent to the attachment the property was sold in execution of one of the decrees,—*Held* that, notwithstanding the whole interest of the mortgagor was intended to be sold, the purchaser took one of the moieties subject to the lien of the unsatisfied mortgage, and that omission or neglect on the part of the Court executing the decree to give specific direction as provided by cl. (2) of s. 295 of the Civil Procedure Code did not prejudice his incumbrance. JANAKY BUTTAN SEN v. JONAH UDDIN MAHOMED ABU ALI SOHAR CHOWDHRY [L. T. R., 10 Cal., 567]

233. *Allowance of set-off of purchase-money against amount of decree.—Suit for share of sale-proceeds.—Principle of distribution.*—In execution of a decree against M, the plaintiff attached and advertised for sale certain property in mouzah A. At that time there were pending proceedings in execution of two other decrees obtained against M by the first and second defendants respectively. These two decrees were obtained on a bond executed by M, by which an 8 annas share of mouzah A was

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to a case where the property is actually sold subject to a mortgage, and where the transaction is such that the purchaser is buying only the equity of redemption; it did not apply to a case where there is merely the right by law in the mortgagee to enforce his mortgage against the purchaser. FAKKER BUX v. CHUTTUNHAR CHOWDHRY [12 B. L. R., 513 note; 14 W. R., 209]

FORAN ALI alias NARAYA MEAH v. GEORGEY [6 W. R., 13]
JOY CHUNDER GHOSH v. RAM NARAIN PODDAR [21 W. R., 43]

See PUNJABIAN DOSSER v. NOSHIN CHUNDER LAL [24 W. R., 305]

228. *Right of mortgagee who has obtained money-decree to share in surplus proceeds.*—Where a mortgagee suing upon his bond obtains a money-decree without any declaration of lien, he is in the same position as if he had not taken any mortgage at all; and in taking out execution his claim to a rateable distribution of surplus sale-proceeds of attached property is founded upon s. 271 of the Civil Procedure Code, 1859. RADHA KANT ROY v. SADAYUT MAHOMED KHAN [21 W. R., 86]

229. *Right of mortgagee to take residue of sale-proceeds and retain his lien as mortgagee.*—Plaintiff in a suit on an instalment-bond on which he had obtained a money-decree, having asked for and obtained the residue of the sale-proceeds after all the judgment-creditors had been fully satisfied, was held not to have abandoned his right as mortgagee. BOLAKER LAL v. CHOWDHRY BURGESS SINGH [7 W. R., 309]

230. *Attachment by mortgagee.—Surplus proceeds.*—Pending a suit against A and N upon a bill of exchange, A deposited with the plaintiff, as security for the amount due upon the bill, the title-deeds of property belonging jointly to N and himself. The plaintiff subsequently got a decree for the amount of a decree against A and N, attached certain property of theirs, including the mortgaged property, and caused it to be sold; and the surplus sale-proceeds, after satisfaction of S's decree, were paid into Court to the credit of his suit. Immediately between this attachment and sale, the plaintiff also attached under his decree on the bill of exchange the mortgaged and other property of A and N, and after the plaintiff's attachment N ratified the equity-attachment made by A. The sale under S's attachment having taken place, the plaintiff sued A and N the purchasers at such sale of the mortgaged property for foreclosure or sale thereof, and obtained a decree declaring that he had a good equitable mortgage of A's share in the joint property, and for an account and sale in default of payment; and the plaintiff subsequently, on 26th May 1873,

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hypothecated as collateral security, and in execution of these decrees the defendants brought to sale, and themselves purchased, not an 8 shares only, but the whole of monzah A, and were allowed by the Court to set off the purchase money against the amounts due to them under decrees.

At the same time, the plaintiff's execution brought by the plaintiff under a 255 of the Civil Procedure Code for his share of the sale proceeds of monzah A, in which the defendants contended that, as set off having been allowed to the defendants, the plaintiff was not entitled to any rateable distribution, and that, if any rateable distribution were allowed, they were entitled to have an allowance made in respect of a mortgage which the plaintiff held in 2 annas share of monzah A, which they had paid off subsequently to the transactions now in question,—

Held that the fact of the set-off being allowed in exercise of the power given in a 254 of the Code, instead of actual payment into Court, did not alter the substantial nature of the transaction, so as to render the purchase money less applicable to the satisfaction of the debts of other attaching creditors.

Held further that the defendants were not entitled to deduct the sum paid by them to clear off the plaintiff's mortgage from the amount of the sale proceeds.

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—continued.

made TAPOWDI HORDAWDI BHAKTI v. MATHE-
PAT LATE BHAGAT . I. T. R., 13 Cal., 489

234. Causes of action—Mortgage-decrees—Mortgagee's right to set-off.

—continued.

receives the same, and a suit brought by a person over to the person who is alleged not to be entitled to does not arise until the money has been actually paid.

particulars but one of a 255 of the Civil Procedure Code of decrees by—The cause of action given by the last mortgagee purchasing under his own decree, Resolution

money—Causes of action—Mortgage-decrees—Mortgagee's right to set-off.

made TAPOWDI HORDAWDI BHAKTI v. MATHE-
PAT LATE BHAGAT . I. T. R., 13 Cal., 489

—continued.

the same Court. On the 20th June 1878 the property was put up for sale in execution of the second mortgagee's decree. The first mortgagee subsequently brought a suit for a sale of the property in satisfaction of his decree, and he could not have only course open to him, and he could not have enforced satisfaction of his decree in accordance with the provisions of a 255 of the Civil Procedure Code, inasmuch as the provisions of the first and second

particulars but one of a 255 of the Civil Procedure Code of decrees by—The cause of action given by the last mortgagee purchasing under his own decree, Resolution

money—Causes of action—Mortgage-decrees—Mortgagee's right to set-off.

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money—Causes of action—Mortgage-decrees—Mortgagee's right to set-off.

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—continued.

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—continued.

could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution. The proper remedy was by a suit. **VENKATARAMAN v. MAHalingAYAN** [I. L. R., 9 Mad., 508 and s. 276—*Clum to rateable distribution under s. 295—Sale pending attachment.*—A claim under s. 295 of the Civil Procedure Code is not enforceable as an attachment against which an assignment is rendered void by the provisions of s. 276. **Ganga Din v. Khushali** [I. L. R., 7 All., 702, followed. **Durga Churn Rai Chowdhry v. Monmohini Dasi** [I. L. R., 15 Cal., 771 and s. 294—*Suit for refund of rateable amount.*—*M* and *C* each obtained a decree against the same judgment-debtor and applied for execution. *C*, in execution of his decree, attached certain immovable property, and, with the permission of the Court, purchased the same under s. 294 of the Code of Civil Procedure and set off his purchase-money against the decree. *M* claimed that the proceeds of the sale to *C* should be rateably distributed under s. 295 of the Code, and that *C* should either elect to have the property re-sold or pay into Court the rateable proportion due to *M*. *C* objected to a re-sale or to pay. *Held* that *C* might be compelled to refund the rateable amount due to *M* by summary process in execution. **MADRYN v. CHAPMAN** [I. L. R., 11 Mad., 356 and ss. 285, 242.

490—*Application for execution, Necessity of, in order to share in distribution under s. 295—Attachment before judgment, Effect of—Decree-holder with an attachment before judgment, Commission by, to apply for execution under s. 285, effect of, on right to share in distribution.*—A decree-holder who has attached before judgment is not entitled to rank under s. 295 of the Civil Procedure Code (Act XIV of 1882) as an applicant in execution, and as such to obtain in execution a rateable share of the property which he has attached, unless, subsequently to his decree, he has applied for execution under s. 235 *et seq.* of the Civil Procedure Code. S. 490 of the Civil Procedure Code does not by implication confer upon a decree-holder who has attached before judgment the right to come in under s. 295 and share in the distribution of the property which he has attached. The effect of that section is merely to take away the necessity for a re-attachment of the property. The attachment before judgment endures and becomes an attachment in execution. **PALLOONI SHARFATJI v. JORDAN** [I. L. R., 12 Bom., 400 and s. 243.

“*Decree for money.*”—“*Same judgment-debtor.*”—*Decree for enforcement of lien and against judgment-debtor personally.*—*Decree-holder entitled to proceed against property or person as he may think fit.*—*U* held a money-decree against *B*, *F*, and *M*, in execution whereof he caused to be attached and sold certain

SALE IN EXECUTION OF DECREE
—continued.
14. DISTRIBUTION OF SALE-PROCEEDS
—continued.

mortgagee, applied to the Court for payment to him of Rs. 500 of this sum, alleging that *A* was entitled only to Rs. 2,000 and Rs. 280 costs, but not to arrears of rent, in preference to his claim as second mortgagee. The claim of *B* was rejected on the 27th May 1881 and the whole amount paid out to *A*. In February 1882 *B* (who had filed a suit on the 23rd March 1881) obtained a decree upon his mortgage. On the 23rd May 1884 *B* sued to recover Rs. 510 paid to *A* on account of rent on the 27th May 1881. The lower Court dismissed the suit on the grounds (1) that *A* was entitled to treat the arrears of rent as interest, and (2) that the suit was barred by limitation. *Held* on second appeal that *B* was entitled to recover the sum claimed. **SIVARAJA v. SUBRAMANYA** [I. L. R., 9 Mad., 57 and s. 287.

The meaning of s. 295 of the Civil Procedure Code is that, when immovable property is sold in execution of decrees, the sale-proceeds are to be applied in satisfaction of incumbrances according to their priority. **SHANI RAM v. SHIB LAL** [I. L. R., 7 All., 378 and s. 238.

Decree—Payment out of proceeds before confirmation of sale—Interest on purchase-money from date of sale to date of confirmation—Civil Procedure Code, 1882, ss. 284, 315.—Although there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution-sale before the date on which the sale is confirmed, yet s. 315 of the Code implies that this may be done. The Court, however, under special circumstances, may refuse to pay over to the decree-holder the purchase-money until the sale is confirmed, but in such case it should provide for due payment of interest on the money detained. *Held* that, under the special circumstances of this case, the decree-holder was not entitled to receive interest from his judgment-debtor from the date of the sale to the date on which the sale was confirmed. **JOSEPH v. MADHUSIRAM v. GOVIND CHANDER ADRI** [I. L. R., 12 Cal., 252 and s. 239.

Execution—proceedings—Rateable distribution—Application for further execution—Notice—Civil Procedure Code, 1882, s. 622.—*A*, and subsequently *B*, obtained decrees against *X*, in execution of which the same land was attached, and *B* obtained an order for rateable distribution. Neither decree was satisfied. *A* then applied for attachment of other property, and the sale was fixed for 28th September. On 25th September *B* filed a petition for further attachment under ss. 250, 274, and also a petition for rateable distribution under s. 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under s. 295, because no application for execution was pending. *Held* on appeal that the petition for execution was wrongly rejected, but that the High Court

—continued—

Heid that, there being no question of fraud in the case, *D* was entitled to enforce his decree in the first instance against the property of *B*, that his decree

—continued—

L. T. R., 10 Av., 35
COURTESY SERVICE BANK, BARNETT
distinguished Delhi and London Bank & Un-
L. T. R., 10 Av., 35

insurance premiums and attached other property of the

and had been found negligent to pay his debt.
ROMANOFF KATHERINE C. PARKER
[T. R. R., 20 Mad., 107]

debtor, A attached by a prohibitory order dated in December funds of the judgment-debtor in the hands of D. In January B attached in execution the

ON OF SALE-1 BOARDS

A and *B*, and that *C* was not entitled to participate therein. SRINIVASA AYYANGAR v. SETHABAIAYYAR [I.L.R., 18 Mad., 72]

'Luzon' vint:

real value of the property to be ascertained by the Court *SHEONATH Doss v JANKI PHOOLAD SINGH*
[1 L. R., 16 Cal., 132]

in question, and of course it is the same as all other questions that arise in execution. The party aggrieved by such a decree is entitled, under the

to refund, CHHANGKAT & PAKHAT
[I. L. R., 18 Bom, 164]

firm A (the respondent) was the legal representative of H . On the 9th November 1986 A purchased the decree from H for £18,000, which sum was retained for the purpose of a loan from A to H .

of the house which had been attached in execution of the decree which she had purchased. In the mean-
time another decree, viz. in suit No. 8 of 1870, had

SALE IN EXECUTION OF DECREE
—continued.
14. DISTRIBUTION OF SALE-PROCEEDS

—continued.

the assignment—Fund by consent paid over to Sheriff by third party—Relative claims of assignees of fund and subsequently attaching creditors—Assets realized by sale or otherwise in execution—Mistaken description, in order of attachment, of property attached.—On the 8th July 1830 the plaintiff brought a suit (332 of 1830) against G for Rs.237, and on 18th July obtained an attachment before judgment of certain money belonging to G in the hands of the B., B. and C. I. Railway Company. On the 5th August 1900 W got a decree in the suit for Rs.2,008, with interest and costs, and on the 18th August 1890 applied for execution. On the 24th September 1890 G made an assignment in favour of his attorneys, Messrs. Wadia and Ghandy, of the fund belonging to him (expressed to be Rs.7,818) in the hands of the Railway Company, subject to the attachment levied on the same by W. This assignment was intended to secure costs incurred by Messrs. Wadia and Ghandy as attorneys for the defendant. Notice of this assignment was at once given to the Bengal attached the sum of Rs.7,818 in the hands of the Railway Company, in execution of a decree obtained by the Bank against G in suit 190 of 1890, and subsequently other creditors of G, who had obtained judgment against him, applied for execution and obtained attachments on the sum in question. On the 26th May 1891, under a consent order in suit 382 of 1890, the Railway Company paid over to the Sheriff of Bombay the sum of Rs.10,84-1-0, which was the amount admitted by the Company to be due to G, after making all just deductions. It was contended by Messrs. Wadia and Ghandy that, under the above assignment, they were entitled to the fund assigned to them, subject only to the claim of the plaintiff, who had at the date of assignment, already attached the said fund, and that subsequent attaching creditors had no claim to the said fund. *Held* that the fund in question must be regarded as "assets realized by sale, or otherwise, in execution of a decree," within the meaning of s. 295 of the Civil Procedure Code. *Held* also that, under the provision of s. 295, the claims of the subsequent execution-creditors were "claims enforceable under the attachment of the plaintiff within the meaning of s. 276 of the Civil Procedure Code," and that the assignment to Messrs. Wadia and Ghandy was void, as well against the claims of the creditors of G, who applied for execution before the 26th May 1891, as against those of the plaintiff to the fund in the hands of the Sheriff of Bombay. *Held* further that the attachment was not limited merely to such portion of the fund as covered the amount of the decree, but was a valid attachment in the form in which it was made, namely, on the whole fund in the hands of the Railway Company. It was argued that the attachment was actually made only on Rs.6,000, and that it did not therefore include the whole fund, which was of larger amount. *Held* that the misdescription in the order of attachment was a mere *falsus demonstratio*, and that the entire sum in the hands of the

SALE IN EXECUTION OF DECREE
—continued.
14. DISTRIBUTION OF SALE-PROCEEDS

—continued.

been obtained against the firm of H B & Co., and had been, prior to the 9th November 1886, purchased by the appellant M, who had also, prior to the 9th November 1886, applied for execution. On the 6th April 1887 the attached house was sold by the Sheriff, and realized Rs.45,000. On the 5th September 1887 an order was made in Chambers that the Sheriff should divide rateably the moneys in his hands in suit No. 657 of 1869 between M and V. M appealed, and contended that by the transaction between V and H K the decree in suit No. 657 of 1869 had been extinguished as against the estate of H D, and that the said transaction amounted, in law and fact, to a purchase, on behalf of the estate of H D, of the proceeds attached in the said suit or the proceeds thereof. *Held*, confirming the order appealed from, that V was entitled to a rateable proportion of the moneys in question. She was only liable under the decree held by the appellant M as the representative of H D. No far as she might have had property of her own, not derived from H D's estate, available for the purchase of A K's decree, she stood in the same position as a third party who might have purchased H K's share of the proceeds before they were realized. The purchase of H K's share with her own money could not prejudice M any more than if an entire stranger had purchased. The fact that she borrowed the money and gave the share as a security to the lender did not affect the question. If the money did not come from H D's estate, it could not matter whether it came directly from V's pocket or from another person at her request. If the money was derived from a source having no connexion, directly or indirectly, with the estate indebted, there is no distinction, in principle, between the representative of the indebted estate and a stranger. *MUNOMANDAS JAKISONDAS v. VIZAL . I. L. R., 13 Bom., 171*

Effect of vesting order in insolvency.—A debtor against whom several decrees had been passed filed his petition in the Insolvent Court at Madras, and the usual vesting order was made. One of the decree-holders had already attached property of the insolvent, and had obtained an order for sale in a District Court, and another decree-holder now applied to the same Court in execution of his decrees, for the attachment of other property and for rateable distribution of the proceeds of sale to be held in execution of the attachment already made. The District Judge held that the vesting order was a bar to both these applications. *Held* that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code. *VIRAKAGHVA v. PARASURAMA . I. L. R., 15 Mad., 372*

250.—*At*—and s. 276—*Attachment before judgment of fund in hands of third party—Decree afterwards obtained—Assignment by judgment-debtor of fund subsequently to the attachment—Creditors attacking the fund subsequent to*

SALE IN EXECUTION OF DECREE

—continued—

15. WRONGFUL SALES—concluded.

state of things when the debt was contracted must be looked to, and at that time the karnavan was competent to bind all the members of the farwad. Any subsequent arrangement in the family could not affect their obligation to the creditor who was not a party to it. The plaintiff's property therefore was liable notwithstanding the partition. *KISHNAK NAIK v. KISHNAK NAIMAR v. KRISHNAK NAIK*. I. L. R., 18 Mad., 452 note

16. INVALID SALES.

(a) DEATH OF DECREE-HOLDER BEFORE SALE.

280. Effect of decree-holder's death on validity of sale—*Civil Procedure Code, 1877, ss. 363, 366—Order confirming sale.*—A judgment-debtor applied that an execution-sale of property belonging to him should be set aside, as the decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and the purchaser. The Court held that the fact of such sale having taken place after the decree-holder's death was no ground for setting it aside, and disallowed such application and made an order confirming such sale. *Held per EVARSON, J.*, that the application for execution of the decree abated on the death of the decree-holder, not having been prosecuted by his legal representative, and such sale was under the circumstances improper and invalid, and the order confirming it should be set aside. *Per SPANKIE, J.*, that such sale was not invalid by reason of the decree-holder's death before it took place. The order confirming it, however, was improper, and should be reversed, and the case should be remanded to be dealt with under the provisions of ss. 365 and 366 of Act X of 1877, as the Court executing the decree should have proceeded under those sections. *Per O'DRISCOLL, J.*, and *SPRAGUE, J.*, that the death of the decree-holder prior to such sale did not render it void. The provisions of ss. 365 and 366 of Act X of 1877 could not be adapted to execution-proceedings. As such sale had been published and conducted according to law, it had properly been confirmed. *DUTTA v. MOHAN SINGH*. I. L. R., 3 All., 759

(b) DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

261. Effect of judgment-debtor's death on validity of sale—*Sale to mortgagee—Civil Procedure Code, 1882, ss. 234, 368.*—The first mortgagee of certain immovable property obtained a decree for the sale of the property, caused the property to be attached, and then ceased to prosecute the execution-proceedings. The second mortgagee then obtained a decree for sale of the property, caused it to be attached, and put up for sale and purchased it himself. The first mortgagee then applied for sale, and the property was put up for sale and purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and suit had been allotted to the plaintiff. *Held* that the members of the farwad under which the property in 1882 a partition deed had been come to between the debt incurred for purposes binding on the farwad. In karnavan of a Malabar farwad, and that it was for a decree was passed against the judgment-debtor as a partition of a decree obtained in 1880, it appeared that the certain land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the separate property.—In a suit for declaration that after partition—joint decree executed against the partition—Execution against one of the sharers of farwad on farwad debt before partition—Decree against karnavan

15. WRONGFUL SALES—continued.

—continued.

SALE IN EXECUTION OF DECREE

258. Property of co-sharers wrongly seized and sold—*Suit to recover shares.*

Where, under colour of buying a's rights and interests sold in execution, the purchaser usurps the shares of a's partners, they need not sue to reverse the sale, but merely to recover their shares, nor are they bound to sue to establish their right as part owners of the land within the time allowed for actions to set aside sales in execution. *ATIKHOOLISSA v. REGHOOMATHI BAKSHJI*

[W. R., 1884, 322

GUNGA NAIK v. BHUTTA v. COLLECTOR OF MIDNAPUR

257. Co-sharer, Suit

by—*Suit for damages for sale against decree-holder.*—The defendant, in execution of a decree against A, seized certain movable property, which was claimed under s. 216, Act VIII of 1859, by B. B was, on investigation, found to be part owner of the property. B's claim was rejected and the sale took place, the property being made over to the purchaser, and the proceeds handed to the defendant in satisfaction of his decree. The sale proclamation declared that the sale extended only to the right, title, and interest of the debtor A, but made no mention of B's claim. In a suit by B for damages against the defendant occasioned by the loss of the property of which he was a joint owner,—*Held* the defendant was not liable.

[B. L. R., App., 73 note: 11 W. R., 528

258. Sale of property of person

not party to execution-proceedings—*Joint decree executed against separate property—Decree against karnavan on farwad debt before partition—Execution against one of the sharers after partition.*—The karnavan of a Malabar farwad borrowed money for purposes which rendered the debt binding on the farwad. The creditor obtained a decree against the karnavan in 1873. In 1882 a partition of the farwad property took place. In 1891 property which had fallen on partition to the present plaintiff's share was attached and brought to sale in execution of the decree of 1879. He was not joined as a party in the execution-proceedings. *Held*, in a suit to set aside the sale in execution of the decree as invalid, that the sale did not bind the plaintiff. *Sankara v. Keliu, I. L. R., 14 Mad., 29*, referred to. *KUNHAPPA NAIMAR v. SHRIDHARI KETTIYAKKA*. I. L. R., 18 Mad., 451

259. Decree against karnavan

of farwad on farwad debt before partition—*Execution against one of the sharers after partition—Joint decree executed against the partition—Execution against one of the sharers*

separate property.—In a suit for declaration that certain land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the karnavan of a Malabar farwad, and that it was for a debt incurred for purposes binding on the farwad. In 1882 a partition deed had been come to between the members of the farwad under which the property in suit had been allotted to the plaintiff. *Held* that the

SALE IN EXECUTION OF DECREES

16. INVALID SALES—continued.

264. Omission to bring in representatives of deceased judgment-debtor—

[I. T. R., 19 Bom., 276

265. Death of judgment-debtor

[I. T. R., 22 Mad., 119

266. Death of judgment-debtor

[I. T. R., 22 Mad., 119

267. Death of judgment-debtor

[I. T. R., 22 Mad., 119

268. Death of judgment-debtor

[I. T. R., 22 Mad., 119

269. Death of judgment-debtor

[I. T. R., 22 Mad., 119

270. Death of judgment-debtor

[I. T. R., 22 Mad., 119

271. Death of judgment-debtor

[I. T. R., 22 Mad., 119

272. Death of judgment-debtor

[I. T. R., 22 Mad., 119

273. Death of judgment-debtor

[I. T. R., 22 Mad., 119

274. Death of judgment-debtor

[I. T. R., 22 Mad., 119

275. Death of judgment-debtor

[I. T. R., 22 Mad., 119

276. Death of judgment-debtor

[I. T. R., 22 Mad., 119

277. Death of judgment-debtor

[I. T. R., 22 Mad., 119

278. Death of judgment-debtor

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16 INVALID SALES—continued

admittedly brought with a that period it was main

tainable *BRAY & SIBRAKAPPA PASAR & NABANAI*

[I. R., 21 Bom., 424

Filed by the Privy Council on appeal (r vemsng

the decision of the High Court)—An execution sale

cannot be treated as a nullity if the Court which sells

has jurisdiction to do so and it cannot be set aside

as irregular without an issue raised for that purpose,

and investigation made into the judgment creditor

as a party thereto nor under a nullity of the Court of

Act 1877 after one year from the date thereof. An

executive Court does not lose jurisdiction to sell

represent the deceased judgment creditor and after

wards become nullity decided that no does. Such decision

is valid unless set aside in due course of law

MAKASAPPA PASAR & NABANAI

BRAY & SIBRAKAPPA PASAR & NABANAI

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BRAY & SIBRAKAPPA PASAR & NABANAI

—continued

16 INVALID SALES—continued

Code (1883), s 311—Ground for setting aside sale

or otherwise—Effect of fraud to which auction-

Civil Procedure

Civil Procedure

Civil Procedure

Civil Procedure

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—continued.

16. INVALID SALES—continued.

purchase-money, on the ground that they were induced to purchase by such false representation, and on the ground that the sale of the interest of *H* in the nature of immovable property situated within the limits of the family domains of the Maharajah of Benares, could not legally be sold at Benares by the Benares Court. *Held* that such false representation must be held to constitute in law such fraud as vitiated the sale of the 29th May 1878. Also that the Benares Court acted *ultra vires* in selling at within the family domains of the Maharajah of Benares an interest in immovable property situated outside the family domains of the Maharajah of Benares. *RAGHUV NATHI BOSS v. KAKKAN MAH.* [I. L. R., 3 ALJ, 568]

274. — Communication

made to judgment-debtor by intending mortgagee and purchaser to present him attending sale.—Where, in an application to set aside the sale, it was alleged that the auction-purchaser who held a mortgage upon some of the property sold told the judgment-debtor that it was not necessary for him to go to the place where the sale was held, because he, the auction-purchaser, would release the property from the mortgage-lien.—*Held* that the facts, even if proved, would not constitute fraud entitling the judgment-debtor to have the sale set aside. *KANT BAGORI v. HOSSAIN UDDIN AHMED* [4 C. W. N., 538]

275. — Gift in fraud

of creditors.—Subsequent sale by creditors in execution of subject-matter of gift.—Purchase at execution-sale for inadequate price by means of fraud.—*Suit by donee to set aside sale for fraud—Rescission when granted.*—In June 1875 *A*, being in pecuniary difficulties, executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs. *B*, one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale the first defendant by means of false representation became the purchaser at an inadequate price. In July 1879 *A* applied to have the sale set aside on the ground of the fraud of the first defendant, but his application was rejected. In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of *B*'s decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. *Held*, rejecting the plaintiff's claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under which the defendant acquired his title as purchaser. That the defendant made to them by *A* when he was in pecuniary difficulties, and included all *A*'s property. It was therefore void as against his then existing creditors, of whom *B* was one. *B* was therefore entitled to sell the property in execution of his decree. *Held* also that the plaintiffs were not entitled to set aside the sale on the ground of fraud, and that the only remedy, if any, open to them was a suit for

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16. INVALID SALES—continued.

damages. The gift by *A* in 1875 was made to his wife as well as to the plaintiffs (his sons), and it gave them the property as tenants-in-common. The plaintiffs were therefore only owners of their respective shares, and were not entitled to have the sale set aside *in toto*. This, however, was what they sued for in their plaint. *A*'s wife could not now join in rescinding the sale, as she must have known in 1879 of the fraud, her husband having immediately after the sale endeavoured to set aside the sale on that ground. A transaction cannot generally be rescinded unless the party seeking it is able to rescind it *in toto*, except where the transaction is severable. *HOMNUSI v. COWASTI*. [I. L. R., 13 Bom., 287]

(a) EXECUTION-PROCEEDINGS STRUCK OFF.

276.

Effect on validity of sale—Beng. Reg. XX of 1795—Will of purchaser.—Regulation XX of 1795 directed that, when any Court of civil jurisdiction should have occasion to sell lands in execution of a decree, it should transmit a copy thereof to the Board of Revenue, which was with all practicable despatch to cause the lands to be disposed of at the presidency, or in the district in which the lands were situated, as they might deem most advantageous to the proprietor. In 1843 a copy of a decree was transmitted for execution to the Board of Revenue in compliance with the regulation, but no sale was then effected. Afterwards two other futile attempts to sell the lands under the decree were made, and then the decree-holder sold the lands to a third party upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and without any further recourse to the Revenue Board. Previous to such sale, the proceedings had been taken off the file, and the number of villages, owing to some inaccuracy, was differently stated in the latter order, and the total sum was increased by adding the interest which had accrued due between the two orders. *Held* that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexatious of delay in the course of procedure, to hold that a good title; for it would be contrary to general principles, and a senseless addition to all the vexatious of delay in the course of procedure, to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose were to be considered as taken in a new suit. Nor was it true in any material sense that either the parties to be sold or the sums to be recovered were different; and the principal object of the regulation being the security of public revenues, that object had been fully answered by the communication to the Commissioner in 1843, and the proceedings which were taken by him upon it. *SINGH v. KISHANAND MISHRA* [Marsh., 592; 2 Ind. Jur., O. S., 1 Moore's I. A., 324 5 W. R., F. C., 7]

SALE IN EXECUTION OF DECREE

—continued.

16. INVALID SALES—continued.

damages. The gift by A in 1875 was made to his wife as well as to the plaintiffs (his sons), and it gave them the property as tenants-in-common. The plaintiffs were therefore only owners of their respective shares, and were not entitled to have the sale set aside *in toto*. This, however, was what they sued for in their plaint. A's wife could not now join in rescinding the sale, as she must have known in 1879 of the fraud, her husband having immediately after the sale endeavoured to set aside the sale on that ground. A transaction cannot generally be rescinded unless the party seeking it is able to rescind it *in toto*, except where the transaction is severable. **HONUMBI v. COWASTI . I. L. R., 13 Bom., 297**

(d) EXECUTION-PROCEEDINGS STRUCK OFF.

276. Effect on validity of sale—

Reg. XX of 1795—Title of purchaser.—**Regulation XX of 1795** directed that, when any Court in execution of a decree, it should transmit a copy thereof to the Board of Revenue, which was with all practicable despatch to cause the lands to be disposed of at the presidency, or in the district in which the lands were situated, as they might deem most advantageous to the proprietor. In 1843 a copy of a decree was transmitted for execution to the Board of Revenue in compliance with the regulation, but no sale was then effected. Afterwards two other little attempts to sell the lands under the decree were made, and then the decree-holder sold the lands to a third party upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and previous to such sale, the proceedings had been taken off the file, and the number of villages, owing to some inaccuracy, was differently stated in the later order, and the total sum was increased by adding the interest which had accrued due between the two orders. **Held** that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose were to be considered as taken in a new suit. Nor was it true in any material sense that either the parties to be sold or the sums to be recovered were different; and the principal object of the regulation being the security of public revenues, that object had been fully answered by the communication to the Commissioner in 1843, and the proceedings which were taken by him upon it. **MOHESH NARAIN SINGH v. KISHANUNND MISHRA** [Marsh., 592: 2 Ind. Jur., O. S., 1 Moore's I. A., 324 5 W. R., P. C., 7]

16. INVALID SALES—continued.

—continued.

SALE IN EXECUTION OF DECREE

purchase-money, on the ground that they were induced to purchase by such false representation, and on the ground that the sale of the interest of H in the nature of immovable property situate within the limits of the family dominion of the Maharsyah of Benares, could not legally be sold at Benares by the Benares Court. **Held** that such false representation must be held to constitute in law such fraud as vitiated the sale of the 23rd May 1878. Also that the Benares Court acted *ultra vires* in selling at Benares an interest in immovable property situate within the family dominion of the Maharsyah of Benares. **LAGHU NATH MOSS v. KARKAR NATH** [I. L. R., 3 All., 568]

274.

Communication made to judgment-debtor by intending mortgagee and purchaser to prevent him attending sale.—

Where, in an application to set aside the sale, it was alleged that the auction-purchaser who held a mortgage upon some of the property sold told the judgment-debtor that it was not necessary for him to go to the place where the sale was held, because he, the auction-purchaser, would release the property from the mortgage-then, **Held** that the facts, even if proved, would not constitute fraud entitling the judgment-debtor to have the sale set aside. **KANT BAGCHI v. HOSSAIN UDDIN AHMED** [4 C. W. N., 538]

275.

Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud—Suit by donee to set aside sale for fraud—Rescission when granted.—In June 1875 A, being in pecuniary difficulties, executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs. B, one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale the first defendant by means of false representation became the purchaser at an inadequate price. In July 1879 A applied to have the sale set aside on the ground of the fraud of the first defendant, but his application was rejected. In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of B's decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. **Held**, rejecting the plaintiff's claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under that gift. The defendant acquired his title as purchaser. That gift was made to them by A when he was in pecuniary difficulties, and included all A's property. It was therefore void as against his then existing creditors. B was one of whom B was one. B was therefore entitled to sell the property in execution of his decree. **Held** also that the plaintiffs were not entitled to set aside the sale on the ground of fraud, and that the only remedy, if any, open to them was a suit for

16. INVALID SALES—continued.

286. Suit for possession against auction-purchaser by setting aside sale

(Civil Procedure Code (Act X of 1877), s. 294—

in execution of a decree certain property was sold in

virtuance of an order under s. 244 of the Civil Pro-

cedure Code, and purchased by a person not a party

to the suit, who subsequently obtained possession

of the property. That order was subsequently set

aside. In a suit by the judgment-debtor to recover

possession of the property from the auction-purchaser

by setting aside the sale,—Held that the order direct-

ing the sale had the force of a decree, and that the

plaintiff was not entitled to the relief claimed. Jan

11 v. Jan Ali Chowdhry, 1 B. L. R., A. C., 56 ;

0 W. R., 154, followed. MUMTAZ SINGH v. RAJA

SINGH. 1 L. R., 11 Cal., 362

287.

the validity of which is impeached—Notice to pur-

chasers.—In a suit by S in his own right as well as on

behalf of his minor brother, to cancel an execution-

sale held in execution of an *ex-parte* decree, to cancel

the said decree and two bonds entered into by members

of their family during the plaintiff's minority, and to

recover possession of a share in the ancestral property

which had been sold, it was found that the advances

of money for which the bonds were executed were

made without proper inquiries as to the necessity for

the loan, and that the minors were not properly re-

presented in the suit in which the *ex-parte* decree

was obtained. Held that the mortgage-bonds under

such circumstances were invalid against the plain-

tiff, and that it would be carrying presumption too

far to say that a decree so obtained must be taken to

be valid as against the minors. Held that the auc-

tion-purchasers could not protect themselves by

relying on the decree and execution-sale after having

received distinct notice that the mother of the plain-

tiff challenged the validity of the whole proceedings.

UNGERE LATE v. SHAM LATE MISSIR

[20 W. R., 120

Where no such notice has been given, the sale

would continue valid. RAM JEWAN LATE v. SHAM

ALL MISSIR. 20 W. R., 123

288.

Effect of reversal of decree upon sale in execution—Sale to bond-

ed purchaser, not a party to the decree, disin-

wished from sale to decree-holder.—A sale having

been taken place in execution of a decree in force at

the time cannot afterwards be set aside as against

the ground that, on further proceedings, the decree

as been, subsequently to the sale, reversed by

an Appellate Court. A suit was brought by a judg-

ment-debtor to set aside sales of his property in

recognition of the decree against him in force at the

time of the sales, but afterwards so modified, as the

result of an appeal to Her Majesty in Council, that

the sales in question having been satisfied with-

out, being also holders of the decree to satisfy

SALE IN EXECUTION OF DECREES

—continued.

16. INVALID SALES—continued.

which the sales took place, and those who were bond-

side purchasers at other sales, under the same decree,

who were no parties to it. Held that, as against

the latter purchasers, whose position was different

from that of the decree-holding purchasers, the suit

must be dismissed. ZAIR-VI-ABDUL KHAIR v.

MUMTAZ AL-ASGHAR ALI KHAN

[1 L. R., 10 ALJ, 166

1 L. R., 15 I. A., 12

Civil Proce-

dures Code (1882), ss. 108, 244, and 314—Sale in

execution of an *ex-parte* decree and purchase by

the decree-holder—Confirmation of the sale—Sub-

sequent setting aside of the *ex-parte* decree—Appli-

cation by a subsequent purchaser in execution of

another decree to set aside the sale on the ground

that the *ex-parte* decree had been set aside.—Certain

immovable properties were sold in execution of an

ex-parte decree and were purchased by the decree-

holder himself. After the confirmation of the sale,

the decree was set aside under s. 108 of the Civil

Procedure Code at the instance of some of the defen-

dants in the original suit. On an application under-

s. 244 of the Civil Procedure Code having been made

by a prior purchaser of the said properties in execu-

tion of another decree, to set aside the sale held

in execution of the *ex-parte* decree, the defence was

that the application could not come under s. 244

of the Civil Procedure Code, and that the sale could

not be set aside, as it had been confirmed. Held that

the case was one under s. 244 of the Civil Procedure

Code; and that the *ex-parte* decree having been set

aside, the sale could not stand, inasmuch as the decree-

holder himself was the purchaser. Doga Mohi Das

v. Sarat Chander Alzoomdar, 1 L. R., 25 Cal.,

175; Beni Persad Koor v. Lakh Rai, 3 C. W. N., 6 ;

Durga Charan Mandal v. Kali Prasanno Sarkar,

1 L. R., 26 Cal., 727; Nawab Zainul-ab-

Khan v. Alahammed Asghar Ali, L. R., 15 I. A.,

12; 1 L. R., 10 ALJ, 166; and Alina Kumari Bibee

v. Jagat Sattant Bibee, 1 L. R., 10 Cal., 220.

referred to. SEE UMEDMAL v. SHINATH ROY

[1 L. R., 27 Cal., 810

4 C. W. N., 692

(F) DECREE FOUND TO HAVE BEEN SATISFIED.

290.

Purchase by one of several judgment-debtors—Full Bench ruling.

—Where a decree was purchased by one of the judg-

ment-debtors and afterwards executed and property

of the other judgment-debtor sold in execution of the

decree, and it was eventually held by a Full Bench

in the case that the purchase of the decree by one of

the debtors was a satisfaction of the decree,—Held,

in a suit against the execution-purchaser to have the

sale declared invalid, that the sale must be set aside.

DIGAMBARER DEBIA v. KSHAN CHURNER DEBIA

[15 W. R., 372

Order for sale and sale in execution under a decree previously

satisfied.—An order for sale and a sale under such

SALE IN EXECUTION OF DECREES

—continued.

16. INVALID SALES—continued.

(i) DEBTS AMENDED AFTER EXECUTION.

299.

Civil Procedure Code (Act XI of 1882), s. 206—Amendment of decree after execution.—In a suit for money against the karnavan and two anandravans of a Malabar taluk, the judgment directed a "decree for the plaintiff as prayed," but the decree ordered payment by one anandravan only. Land belonging to the taluk was attached and sold in execution, and objection by the other members of the taluk having been overruled. After the sale, the decree was amended and brought into conformity with the judgment. In a suit brought by other members of the taluk against the karnavan, the decree-holder and the execution-purchaser, it was found that the judgment-debt had been contracted for proper taluk purposes, and that the land had been sold for its proper value. Held that the sale was binding on the plaintiffs. *Pudr v. CHAMPARAN*

[I. L. R., 14 Mad., 150]

See CHAMPARAN v. PUDR

[I. L. R., 15 Mad., 403]

(j) WANT OF SALEABLE INTEREST.

300. Civil Procedure Code,

1877, s. 313—*Purchaser knowing judgment-debtor has no interest.*—A person who purchases immovable property at a sale in execution of a decree, knowing that the judgment-debtor has no saleable interest therein, is not entitled to the benefit of the provisions of s. 313 of Act X of 1877, which were designed for the protection of persons who innocently and ignorantly purchased valueless property. *MATHA-BIR PRASAD v. DHIVAN DAS*

[I. L. R., 3 All., 527]

301. Civil Procedure Code, 1882, s. 313—*Setting aside sale.*—"Saleable interest."—The fact that property sold in execution of a decree is subject to a mortgage upon which a decree has been obtained, which fact is not disclosed prior to the proclamation of sale, is not sufficient to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had "no saleable interest" in the property within the meaning of s. 313 of the Civil Procedure Code. *Naharmul Morani v. Sudat Ali, 8 C. L. R., 468, distinguished.* *PROFAR CHUNDER CHOKRABORTY v. PANIOTY*

[I. L. R., 9 Cal., 506 : 12 C. L. R., 488]

302. Application to set aside sale—"Saleable interest."—A misrepresentation or concealment in the sale notification which induces a purchaser to buy a property for much more than it is really worth (although that misrepresentation or concealment may be fraudulent), is no ground for setting aside a sale under s. 313 of the Civil Procedure Code. The meaning of s. 313 is, that when a purchaser under an execution sale buys a property which turns out to have no

(g) DECREES AGAINST WRONG PERSONS.

297. Right to have sale set aside where decree was against wrong person as representatives—Subsequent claim by proper representatives—*Stopped—Quiescence.*—One S died indebted to the second defendant, M. On his death his widow, T, became his heir, as he left neither son nor brother surviving. In 1878 M brought a suit to enforce payment of the debt due by the deceased S, and he made R, the mother of S, defendant in the suit, omitting T altogether. On 30th August 1878 M obtained an *ex-parte* decree, and on the 26th July 1880 the house of S, then in the possession of B, was sold in execution, and the first defendant, R, purchased it. On 6th September 1880 the sale was confirmed, and on 26th November 1880 R was put into possession. On the 10th of December 1880 one S presented a petition on behalf, as he alleged, of the plaintiff T, the widow of S, to set aside the sale. He did not produce any authority from her, and his application was rejected on the 14th June 1881. On the 31st October 1878 T adopted the plaintiff B under an authority, as she alleged, of her deceased husband S. In 1881 T filed the present suit on behalf of her adopted son, B, to set aside the sale and to recover the house. Held that the plaintiff was entitled to have the sale set aside and to recover possession of the house. The estate was vested in T as legal representative of her deceased husband. Had T willfully put forward B as the representative of S so as to deceive and mislead M, then, no doubt, she might be held bound by the decree obtained by the latter against B. Her mere quiescence while M willfully sued the wrong person could not affect her legal rights, or deprive her adopted son, the plaintiff B, of his rights. He could not be bound by a suit and sale to which he was not a party either in person or by representation. *BASWANTARA SHINDA v. RANT*

[I. L. R., 9 Bom., 86]

(h) DECREES WITHOUT POWER OF SALE.

298. Sale under

—*Partition of taluk—Construction of decree—Decree explained by judgment.*—In 1870 the managers of the plaintiff's taluk demised certain land now in suit on karnam. In 1885 they sued to redeem the karnam, and a decree was passed that the plaintiff do pay a certain sum to the karnam, and that he do surrender the land; but in the judgment it was said that the karnam amount should be charged on the land. In 1886 the taluk was divided, and the land above referred to was allotted to the present plaintiff's branch. In 1887 the karnam in execution of the above decree, brought the land to sale, and it was purchased by defendant T. Held that the sale was not binding on the plaintiff. *SANKARA v. KANT*

[I. L. R., 14 Mad., 29]

execution of this decree the same property was attached on the 13th September 1878 and under this attachment sale took place on the 15th November as aforesaid.

309 **I. L. R., 10 Cal., 388**
Abey
S 313 Durga Sundari Devi v Govinda Chandra
 existence at all, or to be of no saleable value while the Court may then set aside the sale under
 existence at all, or to be of no saleable value while
1093 **I. L. R., 10 Cal., 388**
Abey
S 313 Durga Sundari Devi v Govinda Chandra
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308 **I. L. R., 10 Cal., 388**
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S 313 Durga Sundari Devi v Govinda Chandra
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307 **I. L. R., 10 Cal., 388**
Abey
S 313 Durga Sundari Devi v Govinda Chandra
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306 **I. L. R., 10 Cal., 388**
Abey
S 313 Durga Sundari Devi v Govinda Chandra
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305 **I. L. R., 10 Cal., 388**
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S 313 Durga Sundari Devi v Govinda Chandra
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304 **I. L. R., 10 Cal., 388**
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303 **I. L. R., 10 Cal., 388**
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S 313 Durga Sundari Devi v Govinda Chandra
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302 **I. L. R., 10 Cal., 388**
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S 313 Durga Sundari Devi v Govinda Chandra
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91 CIVIL SERVICE—continued

incumbrance covers the probable value of the property, is not sufficient to sustain a plea that the person whose property is sold had no calculable interest therein. See all of the Civil Procedure Code comments that either the judgment-debtor had no interest at all, or that the interest was not even in contemplation of fact that the property may fetch little or nothing if sold does not affect the question.

(4) STATE OF TEXAS

310. - Sale in court -

\$10. -
Sale in court-
eution of the portion of the transfer of Pro-
perty Act (1792), s. 99. Sale by mortgage
in execution of decree.—Property subject to it in

PAWMAN I. L. R., 22nd April, 1847

See MATHAYD BATHURSKY MATHEO. DIONDO
DAMONAR KUBANANI, I. T. R., 22 BOM., 024
and BUNAPPA MUDALAN, Commercial and
LAD MORGAGE BANK, I. T. R., 23 MID., 377

31L. Sale contrary to provisions of Transfer of Property Act (11 of 1882) - 00

the case was one of attached property being sold
was, on its true construction, not a decree for sale,
said unity.—*Well* that, inasmuch as the decree
it decreed that it did not affect his right under the
instructed this suit to set aside the said sale or to have
chases, who was the decree-holder. Plaintiff having
a sale ensued and a certificate was given to the pur-
was made for the issue of a proclamation of sale, and
Plaintiff was born in 1891. In 1893 an application
inable to be proceeded against for the amount so due,
provision that the right to the annuity should be
them, and a decree obtained, which contained a
arrows, a suit was brought in 1899 in respect of
Installments due under the bond having fallen into
mortgaging their rights under the said annuity.
the annuity executed a bond for money due by them,
In 1898 plaintiffs father and others then enjoying
drew from a suit for partition then pending.
ancestor and his heirs in consideration of his wife's
1898 an annuity had been settled on plaintiffs
Hindu debtor's son after attachment and sale.—In
not partly at instance of mortgagee—*Kilgh of son*
1892, 3, 5, 55.—*Chowdhury v. Annand*—*sale of attached*

16. INVALID SALES—continued.

(b) That of Submission.

the inalienable of the property, nor in execution or in conveyance, and within the prohibition of s. 97 of the Transfer of Property Act. The condition under which a sale of an attached property is permissible under that section are not satisfied unless there is a decree for sale; and in the absence of such decree, the sale is prohibited; that although a sale in continuation of the sale is not absolutely void for all purposes, it is at least void against all persons who were not parties to the suit in which the decree for money was obtained; that the rights of a Hindu debtor's son may be concluded by a proper mortgage decree and also the mortgage, or if there is no mortgage, by a decree for money and sale of the attached property, but they are not affected by a sale brought about in defiance of s. 97; that the suit was not barred by s. 21 of the Code of Civil Procedure; and that plaintiff was entitled to a decree for the redemption of his share. *MURTHANAN CHETTI v. KIRIPPAASAMI*. . I. L. R., 25 Mad., 372

312.
Effect on validity of sale—
The property after the execution is deemed as if already
sold. Hence the title of property after order
of sale is—*Trust Property (Code, 1872, c. 25)*.
Where certain immovable property, which had been
attached in execution of two decrees, was made by a
Munsiff and the other by the District Court to which
each Munsiff was subordinate, was sold under the
order of the Munsiff.—*Held*, following *Madras Appeal*
—*overruled*. *L. R., 1883, 353*, that the sale
was valid, by reason of the Munsiff's want of jurisdic-
tion to order it. *ANONOUS NATH v. SHAMA SINGAPUR*
[*L. R.*, 5 ALL, 616]

313. *Civil Process*.—Attachment of property in execution of decree of two Courts—Sale of property in Court of higher grade—Sale of property under order of Court of lower grade. - When several decrees of different Courts are cut against a judgment-debtor, and his immovable property is here attached in pursuance of them, the Court of the highest grade where such Courts are of different grades, or the Court which first effected the attachment where such Courts are of the same grade, is, under s. 255 of the Civil Procedure Code, the Court which has the power of deciding objections to the attachment, of determining claims made to the property, of ordering the sale thereof and receiving the sale-proceeds, and of giving effect for their distribution under s. 257. *Held*, therefore, where the immovable property of a judgment-debtor was attached in execution of several decrees, one a Munsif's decree and the rest a Subordinate Judge's decrees, and the Subordinate Judge refused to do so, and such property was sold in execution of the Munsif's decree, that the sale was void having been made in pursuance of the order of a Court which had no jurisdiction to direct it. Is

SALE IN EXECUTION OF DECREE

—continued.

10 INVALID SALES—continued.

THE MATTER OF THE ESTATE OF HADRI PASAD.
HADRI PASAD v. SARAY LAL.

[L. T. R., 4 AU, 356]

tion of s 285 of the Code of Civil Procedure is not affected by the fact that prior to the attachment

47, referred to BALISHEN v. NARAIN DAS
[L. T. R., 18 AU, 348]

Civil Procedure

under s 285 HAN BHAGAT DAS MAHWARI v.
AMKANDHAR MAHWARI

2 C. W. N., 126

318. Civil Procedure

Code, 1877 (1882, s 285)—Attachment and sale in

execution of decrees of several Courts—Certain immovable property was attached in execution of a

decree made by a subordinate Judge and also in exe-

319. Civil Procedure

[L. T. R., 7 Calo, 410; 9 C. L. R., 381

alias MOCORRY ALAN

the Civil Procedure Code applies to immovable property. GANOT CHUAN COORDOO v. GOLAN ALI

and without jurisdiction. Quere—Whether s 285 of

the Civil Procedure Code applies to immovable property. GANOT CHUAN COORDOO v. GOLAN ALI

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SALE IN EXECUTION OF DECREE

—continued.

16 INVALID SALES—continued.

Code of C.
property
owned by a Hindu

318. Jurisdiction of

Winnif—Bengal Civil Courts Act (VI of 1871), s 18

of s 287 of the Code of Civil Procedure, 1882

MUTTAKAVARAY CHETTI v. MUTTAKAVARAY CHETTI

I. L. R., 7 Mad, 47

animately been assigned), had attached the same

ional Munnat had no jurisdiction to attach or sell it.

and that the attachment by C was made improperly

and without jurisdiction. Quere—Whether s 285 of

the Civil Procedure Code applies to immovable

property. GANOT CHUAN COORDOO v. GOLAN ALI

alias MOCORRY ALAN

319. Civil Procedure

[L. T. R., 7 Calo, 410; 9 C. L. R., 381

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property. GANOT CHUAN COORDOO v. GOLAN ALI

and without jurisdiction. Quere—Whether s 285 of

the Civil Procedure Code applies to immovable

property. GANOT CHUAN COORDOO v. GOLAN ALI

and without jurisdiction. Quere—Whether s 285 of

the Civil Procedure Code applies to immovable

SALE IN EXECUTION OF DECREE

16. INVALID SALES—continued.

by a Civil Court, but was first brought to sale by the Court of Revenue, it was held that the purchaser at the sale held in execution of the decree of the Court of Revenue took a good title as against the purchaser at the sale held in execution of the decree of the Civil Court. *Onkar Singh v. Bhup Singh, I. L. R., 16 All, 196; Jaita Bibi v. Abu Jafar, I. L. R., 21 All, 403; and Madho Prakash Singh v. Dhari Mahabhar, I. L. R., 5 All, 406, referred to. KANARU v. DAYAL v. BAKSH LAL, I. L. R., 22 All, 182*

322. Attachment of immovable property in execution of decrees of two Courts of same grade—Sale by one Court pending prior attachment by other Court—Validity of sale of purchaser—*Civil Procedure Code (Act XII of 1882), s. 253.*—X on the 3rd November 1881 obtained a decree in the Court of the Second Munsif of Baghat against J., and on the 6th August 1887 sold such decree to the plaintiff, who on the 26th August 1887 applied in that Court for execution, and on the 5th September 1887 attached the share of J. in a certain jumma. The share was subsequently sold in execution of the plaintiff's decree on the 20th October 1887 and purchased by the plaintiff himself. X, having obtained another decree against J. in the Court of the First Munsif of Baghat on the 6th May 1873, sold his decree in the month of January or February 1887 to the defendant, who on the 10th February 1887 commenced execution proceedings in the First Munsif's Court against J., and on the 16th July 1887 applied for attachment of J's share in the jumma. J. filed an objection which was disallowed, and the share was attached at the defendant's instance on the 28th July 1887, and the attachment was continued on appeal on the 26th November 1887. The plaintiff, on the strength of his purchase of the 20th October 1887, put in a claim in the month of April 1888 in the defendant's execution proceedings in the Court of the First Munsif, which was, however, disallowed. He then filed a suit to set aside the order disallowing his claim, and for a declaration that the right, title, and interest of J. passed to him under the sale of the 20th October 1887. Held that, though the property had been first attached in the Court of the First Munsif, that Court was not a Court of a higher grade than that of the Second Munsif within the meaning of s. 285 of the Code of Civil Procedure, and that the sale to the plaintiff was valid, and that he was entitled to the decree he prayed for. *Bykant Bath Shah v. Rajendro Narain Rai, I. L. R., 12 All, 339, followed; Badri Prasad v. Saran Lal, I. L. R., 4 All, 359; Agbore Nath v. Shama Sundary, I. L. R., 5 All, 616, dissented from; and Mutikarjapan Chetti v. Mutikarjapan Chetti, I. L. R., 7 Mad, 47, referred to. DWARKA NATH DAS v. BANKU BHARAI BOSH, I. L. R., 19 Cal, 651*

323. *Civil Procedure Code (1882), ss. 295 and 296—Concurrent decrees—Distribution of assets among several decree-holders—Sale in execution by inferior Court of property while under an attachment issued by superior Court—On the 9th October 1891 A obtained a decree*

320. *Sale under two different decrees of different Courts of different grades—Civil Procedure Code, 1892, s. 283.*—The first mortgage of certain immovable property obtained a decree for the sale of the property, caused the property to be attached, and then caused to execute the execution proceedings. The second mortgage then obtained a decree for the sale of the property, caused it to be attached and put up for sale, and purchased it himself. The first mortgage then applied for the sale of the property, and the property was put up for sale and was purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and the sale took place without his legal representatives being made parties to the execution proceedings. The Courts which executed these decrees were of two different grades, the Court which executed the first mortgage's decree being of the lower grade. In a suit by the first mortgagee against the second mortgagee for possession of the property, held that the sale to the first mortgagee was not invalid, with reference to the provisions of s. 285 of the Civil Procedure Code, because it had not been ordered and held by the Court of the higher grade, inasmuch as, when such sale was ordered by the Court of the lower grade, the property was not under attachment in execution of the decree of the Court of the higher grade, that decree having been executed by the sale of the property, and therefore the provisions of that section were not applicable. *Badri Prasad v. Saran Lal, I. L. R., 4 All, 359, distinguished. Per OPPERIDJ, J., that there was nothing in the provisions of s. 285 or 296 of the Civil Procedure Code to support the contention that the first mortgage, after allowing the property to be sold, was debarred from enforcing execution of his decree against it, and was only entitled to look to the assets realized at the sale for the satisfaction of his decree. STOWELL v. AJUDHA NATH*

16. INVALID SALES—continued.

320. *Sale under two different decrees of different Courts of different grades—Civil Procedure Code, 1892, s. 283.*—The first mortgage of certain immovable property obtained a decree for the sale of the property, caused the property to be attached, and then caused to execute the execution proceedings. The second mortgage then obtained a decree for the sale of the property, caused it to be attached and put up for sale, and purchased it himself. The first mortgage then applied for the sale of the property, and the property was put up for sale and was purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and the sale took place without his legal representatives being made parties to the execution proceedings. The Courts which executed these decrees were of two different grades, the Court which executed the first mortgage's decree being of the lower grade. In a suit by the first mortgagee against the second mortgagee for possession of the property, held that the sale to the first mortgagee was not invalid, with reference to the provisions of s. 285 of the Civil Procedure Code, because it had not been ordered and held by the Court of the higher grade, inasmuch as, when such sale was ordered by the Court of the lower grade, the property was not under attachment in execution of the decree of the Court of the higher grade, that decree having been executed by the sale of the property, and therefore the provisions of that section were not applicable. *Badri Prasad v. Saran Lal, I. L. R., 4 All, 359, distinguished. Per OPPERIDJ, J., that there was nothing in the provisions of s. 285 or 296 of the Civil Procedure Code to support the contention that the first mortgage, after allowing the property to be sold, was debarred from enforcing execution of his decree against it, and was only entitled to look to the assets realized at the sale for the satisfaction of his decree. STOWELL v. AJUDHA NATH*

321. *Sale under two Courts, first a Revenue Court, and then a Civil Court—N. W. P. Rent Act (XII of 1871), ss. 170, 171, 172—Civil Procedure Code, 1882, s. 285—Effect of section in conflict between Civil and Revenue Courts—Held that the procedure prescribed by s. 285 of the Code of Civil Procedure, although it might be applicable as between Courts of Revenue of different grades, could not be applied where the conflict was between a Court of Revenue and a Civil Court. Hence where the same property had been attached both by a Court of Revenue and*

by a Civil Court, first a Revenue Court, and then a Civil Court, the same property had been attached both by a Court of Revenue and

SALE IN EXECUTION OF DECREE

16 INVALID SALES—continued.

continued

the Small Cause Court in inferior in grade to the Court of the First Class Subordinate Judge. The

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different Courts against same judgment-debtor—
Lettres given by both Courts to judgment-debtor to
raise amount by private sale—Civil Procedure Code
(1859).—Confirmation of such sale by
Court—Subsequent application for confirmation
to other Court.—I obtained a decree against A in the
Court of the second class and subordinate Judge at
Saudahli. He applied (darkhast of 1893) for execu-
tion under a 305 of the Civil Procedure Code (Act
of 1859), to raise the amount of the decree by
386

SALE IN EXECUTION OF DECRET
—continued.

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against *B* in the Court of the first Class Subordinate Judge of Surat. On the 13th October 1891 *C* also obtained a decree against *B* in the Court of the second Class Subordinate Judge at Surat and immediately on the 14th October 1891, applied for

extraordinary jurisdiction. *Held* that the sale was good. NARAYJI BHOIRAJI, HAMDAS NAVABHAI
J. L. R., 16 Bom., 458

324. _____ Civil Procedure

Code (1882), &
in two Courts—
the Court—Sm
Western Province
the purposes of a.

Board of a 200 of the Code of Civil Procedure
Baitu Ram & Raghuram Dyal
[T. T. B., 16 May, 11]

326. _____ Affidavit
and proclamation of sale in execution of decrees of
Small Cause Court—Subsequent application for

execution be attached a debt due to M and a proclamation of sale was duly issued. Before the sale took

however, under the Small Cause Court decrees were continued, and the debt was sold in execution and was

The objection and refusal of the commission of the sale. The applicant then applied to the High Court under

SALE IN EXECUTION OF DECREE

16. INVALID SALES—continued.

—continued.

jurisdiction of a Court cannot depend upon its knowledge of facts. If an attachment in a higher Court deprives a Court of lower grade of jurisdiction to sell, the sale must be, I apprehend, invalid, whether the Court of lower grade knows of it or not. If the sale is held to be in such cases only irregular, the purchaser will take an indefeasible or defensible title according to whether he knows or does not know of the irregularity. If he buys *bona fide* and without notice, his title would be perfect, and he will not be affected by the irregularity of the proceedings in the sale. *Keena Alston v. Ram Kishan, L. R., 18 I. A., 111.* If the purchaser with notice, he runs the risk of his purchase being set aside. *Abdul KAMIR v. THOKORAS THIRMOHAN DAS* [I. L. R., 22 Bom., 88]

328. Code (Act XIV of 1882), ss. 15, 285—Sale in execution by inferior Court of property already under an attachment by a superior Court—Jurisdiction of Munsif—Preferential right of purchasers in execution—sale—Concurrent decrees, Execution of.

—A obtained a decree against B in the Court of the Munsif of Jamui, and in execution thereof attached B's property on the 16th March 1891; the property was sold on the 20th April 1891 and purchased by C, who obtained possession of it on the 3rd of August 1891, and then sold his interest to the plaintiff. At the same time the defendant A had a decree for costs against B and his heirs in the Court of the Subordinate Judge of Monghyr, and in execution thereof attached the same property on the 4th February 1891, and sold it on the 24th August 1891, i.e., about four months after the sale of the property by the Munsif. The plaintiff sued for possession on the ground that, having purchased the property of B before the second sale by the Subordinate Judge, she was entitled to the property. The defendant contended that the sale by the Munsif of the property under attachment by a Court of a higher grade was absolutely void, and the Munsif had no jurisdiction to sell the property under s. 285 of the Civil Procedure Code. *Held* that the sale by the Munsif was not without jurisdiction, and that it conveyed to the plaintiff a valid title to the property. S. 285 of the Civil Procedure Code is merely a section for procedure to prevent different claims arising out of the attachment and sale of the same property by different Courts. *Bhikan Nath Shah v. Rajendra Narain Rai, I. L. R., 12 Cal., 333; Dwarka Nath Das v. Banku Behari Bose, I. L. R., 19 Cal., 661; and Patel Narainji Aloraji v. Hari-das Narainji, I. L. R., 18 Bom., 458*, referred to. [I. L. R., 25 Cal., 46]

329. Code (1882) s. 285—Attachment of same property by different Courts—Sale by both Courts—Titles of the respective purchasers.—Where property not in the custody of more Courts than one, s. 285 execution of decrees of more Courts than one, s. 285 of the Code of Civil Procedure does not take away

SALE IN EXECUTION OF DECREE

16. INVALID SALES—continued.

—continued.

its extraordinary jurisdiction. *Held* that the Judge of the Belgian Court had concurrent jurisdiction to sell and convey the sale notwithstanding the execution and leave to sell by the Sanndatti Court. The application to the Sanndatti Court by A was therefore superfluous and ought to have been rejected, inasmuch as the sale had already been confirmed by a competent Court (*viz.*, the Court of Belgium), and nothing further remained to be done in regard to it. *ANDAPPA v. BUNIAVO ANNARI* [I. L. R., 19 Bom., 539]

327. Attachment of

same property by different Courts—Sale by both Courts—Titles of the respective purchasers at such sales—Civil Procedure Code (Act XIV of 1882), s. 285.—A and B obtained decrees against C. A's decree was obtained in the Court of the Subordinate Judge at Surat. B's decree was obtained in the Small Cause Court at Surat. In execution of their respective decrees, both A and B obtained orders of attachment on the same day of a certain debt due to C by the Municipality of Surat. Notice of the attachment was given by the Subordinate Judge to the Small Cause Court, under s. 285 of the Civil Procedure Code (Act XIV of 1882). On the 16th November 1893 the Subordinate Judge issued an order for sale of the attached debt, and on the 18th December the Small Cause Court issued a similar order. Both Courts sold the debt on the 6th January 1894, the Small Cause Court selling first in point of time. At the sale by the Subordinate Judge the plaintiff bought the debt and the defendant was the purchaser at the sale by the Small Cause Court. The defendant, after his purchase, sued the Munsif for the debt, making the plaintiff a party. The defendant, and he obtained a decree against the Municipality. The plaintiff also sued the Munsif, making the defendant a party, and he also obtained a decree which was confirmed by the District Court. Against this decree the defendant appealed to the High Court. *Held* that the plaintiff had the better title. The defendant had bought at the sale held by the Small Cause Court. The sale by that Court after it had received notice of the attachment proceedings in the Court of the Subordinate Judge of the Civil Procedure Code (Act XIV of 1882), was in direct contravention of the provisions of s. 285 of the Civil Procedure Code (Act XIV of 1882). The Small Cause Court had full notice of the proceedings in the Subordinate Judge's Court, and there was no reason to suppose that the defendant himself had not similar knowledge. The defendant did not set up the plea that he was a *bona fide* purchaser without notice. *Per FARMAN, C.J.*—The sale by the Small Cause Court was an act done in the irregular exercise of admitted jurisdiction. But when property is attached by more Courts than one, although each has jurisdiction to sell, that jurisdiction should be exercised by the Court of the highest grade (s. 285). If by a mistake of law, or in ignorance of an earlier attachment in a Court of a higher grade, a Court of lower grade proceeds to sell, it is not deprived of jurisdiction to do so by s. 285. The

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the jurisdiction of the interior Court, and any proceedings by such interior Court in contravention of that section will be vitiated only where there has been notice of the proceedings in the superior Court. KUNAWAN v. LUNGUETI.

॥ श्रीगणेशाय नमः ॥

order for sale had jurisdiction to hold the sale.

Chand Day v Mokkoda Devi, 1 L R, 17 Cal, 699 distinguished. Gope Mohan Roy v Doyabaki

Debye v Shih Chandra Pal Choudhury, I. T. H., 91 Cal. 530 referred to. *THE HONORABLE JUSTICE*

Die Hami Kore
I. L. R., 22 Calo, 871

TINCOURT DEVA & SETH CHANDRA PAT CHOW
I T. R., 21 Cale, 688 DRURY

333 ————— Decree set aside
as made without jurisdiction — When on a re hear

ing a Deputy Collector set aside his former judgment as passed without jurisdiction it was held that his

proceedings under that judgment were of them-
selves null and void and that it not require any

order in words to set aside the sale which they involved. Onitago Moonlighter Dossia + Pukony

NY 100-104401

1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.

A, in a certain property was sold and purchased by B. The decree was after the sale set aside as having been passed without notice.

proving clear passed without jurisdiction. In a suit by A against B for confirmation of possession, on the ground that B was about to take possession, of the

property under the purchase—*Held* that the sale in execution was a nullity, as the decree had been

passed without jurisdiction. Jan 11: v Jan Al
Choudhary 1 B T R, A C 66 10 W E 157, and

Reverend Dr. J. A. Dyer, 8 W. H., 309 distinguished

CHOWDHURY & PRITTY NATH BOND
[E B L. R., Ap, 80]

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sells under a *fi fa* property which could not legally be sold—e.g., an equity of redemption.—*Held* it

sale was null and void, and the purchaser too nothing by his purchase. When therefore the pur-

chuset was also a mortgagee who was in right of purchase put into possession—*Heid* that, notwithstanding

exists and he must be taken to have been in possession as in the case of the other.

17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 85

338 Sale of once trial land by order of the Court—Act V of 187

SALE IN EXECUTION OF DECREE

16. INVALID SALES—continued.

A suit to recover property alleged to have been sold in execution by a Court which had no jurisdiction was not barred by Act VIII of 1859, s. 257. *KANAYAR SINGH v. OOMADPUR BHUTT*. 21 W. R., 291

340. Sale of property for purpose of realizing Court-fees erroneously supposed to be due to Government—*Ultra vires*—Want of jurisdiction.—An order for sale and when in fact there was no jurisdiction in the Court to make the order. *Ram Lal Motra v. Rama Sundari Datta*, I. L. R., 13 Cal., 307, referred to.

[I. L. R., 15 All., 324

(m) DECREES BARRED BY LIMITATION.

341. Suit to recover purchased property—Right of suit.—A suit to recover possession of, and to establish the right to, property purchased in execution of a decree declared after the sale to be null and void as being barred by limitation at the time of execution, will not lie. *PARADUTY LALL v. RUTUN SINGH*. 5 N. W., 242

See *ZUMBER SIBDAE v. ASSEEMOODEEN SIBDAE* [23 W. R., 257

342. Objection to validity of sale—*Civil Procedure Code*, s. 230—Decree, *Execution of, after twelve years*.—After a sale of land in execution of a decree and before its confirmation, the judgment-debtor cannot object to the validity of the sale on the ground that the execution of the decree is barred by the provisions of s. 230 of the Code of Civil Procedure, 1877. *GANGATHARA PANDITAY v. RATHABAI AMTAR*. I. L. R., 6 Mad., 237

343. "Subsisting decree," Meaning of—*Sale certificate, Effect of—Act XIV of 1882, ss. 244, 316—Costs*.—The words, "subsisting decree," in the proviso to s. 316 of the Code of Civil Procedure, refer to a decree which is unrevoked and in full force, and not merely to a decree the execution of which is not barred by limitation. Where a decree under which a sale takes place remains unrevoked, and the sale under it has been confirmed, a sale certificate will operate as a valid transfer of the property sold, notwithstanding that the sale has actually taken place at a time when execution of the decree is barred by limitation. *SARADA CHURN CHOWKURMI v. MANOHAR ISHUR MAHA*. I. L. R., 11 Cal., 376

344. Effect on validity of sale—*Execution of decree barred at time of sale—Purchase of decree-holder*.—G. A obtained a decree against M. Afterwards T. N., who had obtained a decree against G. A, attached the decree which he had obtained against G. A, and, upon sale in execution, became himself the purchaser of that decree. It afterwards appeared that the decree held by T. N against G. A was barred by limitation. *Held* that the execution of T. N's decree against G. A, being

SALE IN EXECUTION OF DECREE

16. INVALID SALES—continued.

(*Civil Procedure Code*), ss. 311, 320—*Rules prescribed by Local Government under s. 320—Invalidity of sale*.—A Subordinate Judge made an order for the sale in execution of a decree of certain immovable property, which was "ancestral" within the meaning of the notification by the Local Government, No. 671, dated the 30th August 1880, under which execution of such decree should have been transferred to the Collector; and such property was sold accordingly. *Held* that the order for the sale of such property having been made without jurisdiction, the sale was void and should be set aside. *SUKENDRO RAY v. SHRO GHULAM*. I. L. R., 4 All., 382

337. *Writ of—Sheriff, Jurisdiction of*.—Inasmuch as since the establishment of the High Court, or at all events since 1865, a writ of *fiery facias* could not run beyond the High Court's original jurisdiction, a sale in execution of a decree by the mortgagor's Court of property in the mortgagor's possession, at the time of such purchase, notwithstanding that, at the time of such sale, the Sheriff was in possession of the property under a writ of *fiery facias* issued subsequently to 1865. *Monomothona Dey v. Greender Chunder Ghose*, 24 W. R., 366, cited. *GRISH CHUNDER DAS v. BROJO JIBUN BOSE*. 8 C. L. R., 4

338. Sale set aside as being without jurisdiction—Title of purchaser

Certificate of sale.—In 1862 a suit was filed on the Equity Side of the Supreme Court for partition of the property of a Hindu family, and an injunction was issued prohibiting V, a party to the suit, from interfering with the property. In 1863 a decree was passed for the administration of the property under the direction of the High Court, and the injunction against V was continued, and on July 7th, 1866, part of the property, a house at Chingieput, was sold by the master and bought by the plaintiff's predecessor in title. In 1865 V and his son (the second defendant), who was no party to the suit, mortgaged the house at Chingieput to the first defendant, who remained in possession from that date. *Held* in a suit brought on July 6th, 1878, to recover the property, that, as the High Court had no jurisdiction before the Letters Patent of 1865 in suits for immovable property, partly within and partly without the town of Madras, the sale of the house at Chingieput in 1866 by the Court was *ultra vires*, and the plaintiff acquired no title thereby. *SADAGORA BUDITARA MAHA DESIKA SWAMIAH v. JANUNA BHAI AMTAR* [I. L. R., 5 Mad., 54

This decision was afterwards reversed on review so far as it decided that the High Court prior to 1865 had no power to execute a decree in a partition suit between Hindu inhabitants of Madras by selling immovable property situated in Chingieput district. *JANUNA BHAI AMTAR v. SADAGORA BUDITARA MAHA DESIKA SWAMIAH*. I. L. R., 7 Mad., 56

Suit to recover property sold in execution by Court not having jurisdiction—Civil Procedure Code, 1859, s. 257.

16 INVALID SALES—continued

trust for the decree holder, and is at liberty to realize it and pay the proceeds over to him to the extent of his decree. SHRO GHORAM SANO " HANUT HOSEKIN . I. L. R., 4 Cal., 8 [3 C. L. R., 208 S. C. SHRO GHORAM SANO " KANU LAL. 3 C. L. R., 208

348. Order setting aside sale after confirmation—Certificate and confirmation of sale—Forsyth v. Forsyth—1879—Linn. 165—A person purchased certain property at a sale in execution of a decree in November 1878, his purchase was confirmed, and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession. The judgment debtor applied to have the sale set aside for irregularity, but his application was dismissed both at the hearing and on appeal. He

from its confirmation, the judgment-debtor, on a summary application, obtained an order setting aside the sale and putting the auction purchaser out of erroneous, the after the sale many order. The words "substantive decree," in s. 316 of Act X of 1877, as amended by Act XII of 1879, mean a decree unreversed and in full force, and not merely one upon which execution cannot be issued. In the matter of THE ESTATE OF ALANO KEND HOSEKIN v. KOKIL SINGH [I. L. R., 7 Cal., 81; 9 C. L. R., 53

(a) SALE PENDING APPEAL.

348. Sale of property released from attachment pending appeal from decree declaring property liable—Civil Procedure Code, 1877, ss. 260, 283, and 545—S. 283 entitles an exception to the procedure laid down by s. 545. When property has been released from attachment under s. 260 and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s. 283. FATHMA v. MUNDAYAPPA [I. L. R., 11 Mad., 88

350. Decree setting aside sale—Second sale pending appeal to which decree-holder not made party—Confirmation of first sale in appeal—Purchaser of the same property in execution of decree, Priority between—Laches of appellant in not obtaining stay of execution.—

16 INVALID SALES—continued

was invalid by lapse of time at the time of sale, the sale was invalid. GOLAN AGAR v. LAKSHMAN DAS [5 B. L. R., 68; 13 W. R., 273

346. Separate suit for declaration that decree was barred by limitation at time of sale—Right of suit—A sued for possession of certain lands to which he alleged he was entitled as usufruct (executor) under a will, and which B had fraudulently, during the minority of himself and his brother, caused to be put up for sale under a decree the execution of which was barred by lapse of time. B had become the purchaser at such sale. Held that a suit would not lie for the purpose of having it determined that the execution of B's decree was barred. MOHAT MOHAT ALI CHOWDH v. MOHA BHASMOOLAN CHOWDH [1 B. L. R., 42; 20 W. R., 5

346. Suit to recover property sold—Sale set aside, execution of decree being found to be barred by limitation—Suit to recover the property from purchaser—A creditor obtained a decree against his debtor, and applied for and obtained an order for execution. This application was unsuccessful, opposed by the judgment debtor on the ground that execution was barred by limitation. Certain properties of the judgment debtor were attached and sold in execution of his decree, the judgment creditor himself becoming the purchaser. In due course the sale was confirmed, and a certificate

347. Right to deposit by judgment debtor in execution-proceedings after execution of decree as barred—Limitation—Money of movable property deposited in Court to stay sale—Order for sale confirmed—No execution taken out within the three years after deposit—[I. L. R., 10 Cal., 220

347. Right to deposit by judgment debtor in execution-proceedings after execution of decree as barred—Limitation—Money of movable property deposited in Court to stay sale—Order for sale confirmed—No execution taken out within the three years after deposit—[I. L. R., 10 Cal., 220

347. Right to deposit by judgment debtor in execution-proceedings after execution of decree as barred—Limitation—Money of movable property deposited in Court to stay sale—Order for sale confirmed—No execution taken out within the three years after deposit—[I. L. R., 10 Cal., 220

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE—continued.

ss. 310A, 311, and 312—Effect of sale not being set aside either under s. 310A or 311 of the Code.—A certain property was sold on the 16th August 1895 in execution of a mortgage decree, dated the 9th December 1892, and was purchased by A. In the meantime an eighth-anna share of the said property was sold in execution of a money-decree and was purchased by R on the 22nd May 1893. On the 10th September 1895 the judgment-debtor applied to set aside the mortgage-sale under s. 311 of the Code of Civil Procedure, and on the 14th September 1895 a similar application was made by R. On the 28th March 1896 both these applications came on for hearing before the Subordinate Judge, who passed no order; and on the same date R presented a petition asking the Court to set aside the sale held in execution of the mortgage-decree, upon payment by him of the mortgage-money, with interest and costs, and also to declare that he might be entitled to redeem the property. On the 30th March 1896 the Subordinate Judge allowed the petition and ordered the sale to be set aside upon the aforesaid terms. Held that, inasmuch as under s. 312 of the Code of Civil Procedure A was entitled to have an order confirming the sale of the 16th August 1895, unless the sale were set aside under s. 310A or s. 311 of the Code of Civil Procedure, and as the sale was not set aside under either of those sections, the Court below had no jurisdiction to set aside the sale upon payment by the applicant of the mortgage-money with interest and costs. *By Mohan Thakur v. Uma Nath Chowdhry, I. L. R., 20 Cal., 8, referred to. KHETTER NATH BISWAS v. RAJENDRA ARI* [I. L. R., 24 Cal., 682

354. Amount payable in Court—Civil Procedure Code (Act XIV of 1882), s. 310A.—The judgment-debtor within thirty days from the date of sale deposited in Court, under s. 310A of the Code of Civil Procedure, the amount calculated in the office of the Munsif as payable under the section. The Munsif set aside the sale. On appeal to the High Court by the auction-purchaser on the ground that the amount deposited by the judgment-debtor was not in compliance with s. 310A, and that before the sale could be set aside it was necessary for the judgment-debtor to pay, in addition to what he deposited, a sum equal to 5 per cent. of the purchase-money,—Held that, when the amount payable by the judgment-debtor under s. 310A of the Code of Civil Procedure has been calculated by an officer of the Court as a matter of right; the Munsif therefore was justified in setting aside the sale. *Ugrak Lal v. Radhak Pershad Singh, I. L. R., 18 Cal., 255, referred to. MARBOOT AHMED CHOWDHRY v. BAZLE SABAN CHOWDHRY I. L. R., 25 Cal., 609* See ARBOOL LATIF MOONSHI v. JADUB CHANDRA MITTER I. L. R., 25 Cal., 216

SALE IN EXECUTION OF DECREE

—continued.

16. INVALID SALES—concluded.

A sale in execution of a mortgage-decree was set aside and the auction-purchaser appealed to the High Court without making the decree-holder a party to the appeal. The decree-holder applied for a fresh sale, and at a second sale held pending the appeal purchased the property and obtained possession. On appeal to the High Court the first sale was upheld, and an order passed confirming the sale. In a suit by the decree-holder purchaser at the second sale,—Held that the effect of plaintiff's not being made a party to the appeal is practically the same as if he had not been a party to the suit. Held also that the plaintiff was not a party to the subsequent proceedings and could not be said to have bid at the sale with the effect of those proceedings hanging over his head. *Jan Ali v. Jan Ali Chowdhry, I. L. R., A.C., 56; 10 W. R., 154, referred to. Held that the defendant could have applied to the High Court for a stay of execution, and if the execution had been stayed, the present litigation would not have arisen. GOWRI PERSHAD v. RAZUL AHMAD KHAN* [I. L. R., 23 Cal., 857

17. SETTING ASIDE SALE.

(a) GENERAL CASES.

351. — Right of judgment-debtor to set aside sale on deposit of the amount of debt—Civil Procedure Code (1882), s. 301A (a)—Poundage money—Costs.—A judgment-debtor, whose land had been sold in execution, is entitled to have the sale set aside under the Civil Procedure Code, s. 310A (a), if he deposits 5 per cent. of the purchase-money, including that deducted by the Court for poundage, and fulfils the requirements of cl. (b), even though something more on account of the poundage was recoverable from him under the head of costs. *MITHU AYYAR v. RAJASAMBAI SASTRIAL* [I. L. R., 20 Mad., 158

352. Setting aside sale by deposit of the debt due to the decree-holder at whose instance the property is sold—Code of Civil Procedure (Act XIV of 1882), ss. 295, 310A—Application for rateable distribution.—When property has been sold in execution of a decree and there are other decree-holders who, prior to the sale, have applied under s. 295, Civil Procedure Code, for rateable distribution, the person whose property has been sold is competent to have the sale set aside under s. 310A by depositing only the amount of the decree, for the satisfaction of which the sale was proclaimed and took place. *HARI SUNDARI DASIA v. SHASHI BATA DASIA I. C. W. N., 195* S. 295 does not apply to a deposit made under s. 310A by the judgment-debtor. *BRINJI LAL PAI v. GOPAL LAL SEAL I. C. W. N., 695* 353. Sale under mortgage-decree—Sale in execution of a money-decree. Effect of, before the sale in execution of mortgage-decree confirmed—Code of Civil Procedure (1882),

SALE IN EXECUTION OF DECREE

17 SETTLING ASIDE SALE—continued

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17 SETTLING ASIDE SALE—continued

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17 SETTLING ASIDE SALE—continued

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17 SETTLING ASIDE SALE—continued

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17 SETTLING ASIDE SALE—continued

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17. SETTING ASIDE SALE.—continued.

the house,—*Held* that the order of the Judge must be set aside as illegal, and the original order, confirming the sale, allowed to stand. *KOSHT v. NARAYAN DHARAPA*. 8 Bom., A. C., 110.

364. See *validity by*

manager of lunatic.—*Second attachment and sale before security given*—Attachment without sale, *Validity of*—The plaintiff, as manager of the estate of her husband, a lunatic, obtained a decree and attached and became the purchaser of the lands of the defendant in execution of the decree. The Judge required her to give security for the proceeds of the sale before he would allow actual possession to be given to her. The sale was confirmed, but several months elapsed before she found security, and meanwhile the same lands were attached and purchased by other creditors under another decree against the said debtor, and possession was given to them. *Held* (reversing the decision of the High Court) the title of the plaintiff must prevail. The security was ordered for the protection of the lunatic against misappropriation by his manager; it was not a proceeding affecting the judgment-debtor. The second sale ought not to have been ordered or confirmed. Under the Code of Civil Procedure, property may be attached without view to immediate sale. *SARODA PRASAD MULLICK v. LUTONHERRST SING DOOGRA* [10 B. L. R., 214] 17 W. R., 289: 14 Moore's I. A., 529.

365. Second sale be-

fore confirmation.—*Separate suit*—Effect of sale before confirmation.—The plaintiff and the defendants C and D were the co-owners of a portion of a shikmi taluk in the 10 annas share of a zamindari belonging to the defendant A, having succeeded in enhancing the rent of the tenure, obtained a decree for arrears of rent at the enhanced rate, which he proceeded to execute in 1880. In 1881 she obtained another decree for arrears of rent of a subsequent period, in execution of which the tenure was put up to auction and sold for Rs. 5,000 on 20th July 1881, A herself being the purchaser. Before this sale was confirmed, the tenure was, on 20th September 1881, again put up for sale in execution of the first decree, and was purchased by A for Rs. 10. The plaintiff and C and D applied to have both sales set aside on the ground of irregularity. The application as regarded the sale of 20th September 1881 was rejected on 30th December 1881, and this order was confirmed by the High Court on 14th August 1882 and (on review) 21st March 1883. Meanwhile the sale of the 20th July 1881 was set aside by the order of the Subordinate Judge on 19th June 1882. In a suit against A, B (the agent of A), C, and D, brought on the 20th March 1884, in which the plaintiff prayed that the sale of 20th September 1881 "be declared ineffectual and be set aside, and that the plaintiff do recover possession of the property."—*Held* that the suit being not one to set aside the sale on the ground of fraud or anything connected with the sale itself, but on account of the setting aside of the first sale, which

17. SETTING ASIDE SALE.—continued.

Bengal Tenancy Act, nothing but the tenure in default could have been sold, and that the sale of the claim which the judgment-debtor had against the decree-holder was altogether bad. *LUCHMIPAT v. MANDIP KORN*. 3 C. W. N., 333.

360. Ground for setting aside

sale.—*Civil Procedure Code, 1859, ss. 256, 257—Suit to cancel order setting aside sale—Act XXIII of 1861, s. 11*—A Munst having cancelled an auction sale of landed property on the sole objection of the judgment-debtor that the property realized a low price, and the Judge having dismissed the auction-purchase's appeal from the said order on the ground that the Munst had no authority to cancel the sale under the terms of s. 257 of Act VIII of 1859 without some irregularity in conducting or publishing the sale being proved, and that the said order must therefore be taken to have been passed under s. 11, Act XXIII of 1861, which admits of no appeal by the auction-purchaser, who was no party to the execution-proceedings,—*Held* that such order passed by the Munst was not a proceeding under s. 11 of Act XXIII of 1861, but an order passed *ultra vires* under s. 257 of Act VIII of 1859, and that a suit would lie for its cancellation—the finality of an order under ss. 256 and 257 of Act VIII of 1859 depending on its compliance with the terms of those sections. *SUKHAI v. DARYAI*. T. L. R., 1 All., 374.

361. Civil Procedure

Code, 1882, ss. 311, 312, 313, 644—Act XII of 1879, sch. IV, form 149—*Suit to set aside sale—Under Act XII of 1879, form 149 of sch. IV of the Code of Civil Procedure provided that sixty days should elapse between a sale in execution of a decree and its confirmation. A sale having been confirmed before the expiry of sixty days,—Held* that the sale was not rendered inoperative, and that its effect was not postponed by reason of the provision in form No. 149. *HAI v. ATHABAMAN, MUSSA v. ATHABAMAN*. T. L. R., 7 Mad., 512.

362. Order confirm-

ing sale after order setting it aside.—A sale in execution of a decree was set aside by a subsequent decree of 9th March 1861, but was afterwards allowed to stand by an order of 7th May 1862. As no suit was brought to set aside the latter order, it was held to be a final judicial proceeding, and the sale declared to be good and valid. *MUNNOO LAIT v. CHOOKRAS SHANOO*. 7 W. R., 116.

363. Objection for

irregularity disallowed.—*Sale set aside on other grounds*—On application by the judgment-debtor to the Principal Sudder Ameen to set aside the sale by auction of a house in execution of a decree, on the grounds of material irregularities in publishing and conducting the sale, from which the applicant sustained substantial injury, the objections were disallowed as untenable, and the sale confirmed. But the District Judge on appeal set aside the sale on a ground on which he had no authority to interfere. On petition to the High Court by the purchaser of

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17. SETTING ASIDE SALE—continued.

—комментарий.

took place long after the second sale had been com-

firm, and when no execution proceedings were pend-

ing in which it was possible for the printer to take the question, the suit would be, *Baroda Char*

Chackertbunty v. Mohammed Irf. Khan, I. L. R., 11 Cal. 376, distinguished. Held also that the first

[illegible]

against the plaintiff and C and D, so that there was

During the interval between the sale and the completion of sale

there is not merely a contract for sale, but an inchoate transfer of title which only requires confirmation to

protect it, a sale actually takes place which, if not

Atulick & Luchmepant Singh Doogar, 14 Moore's

MAZODOLAR & HINAYTA KUMARI DEBIA

[T. L. R., 13 Calif., 597]

388 ————— Civil Process —————
 durs Code, ss 811, 812—Objection to sale—Legal

disability—Limitation Act (XV of 1877), s. 7—
Order confirming sale before time for filing objection

Although—Appeal from order—

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11. *Journal of the American Medical Association*, 277, 1996, 1000-1001.

barred by limitation, the judgment debtor had there-

entertainment and deal with it before proceeding to confirm the sale or grant a sale certificate. The order disallowing the application and the order committing the sale were set aside, and the case remanded for the

SALE IN EXECUTION OF DECREES

17. SETTING ASIDE SALE—continued.

irregularity must be one who has sustained substantial injury arising therefrom, as laid down in *Jogee Narain Singh v. Bhugbano*, 2 W. R., Mts., 13, and explained by *Krishnarao Venkatesh v. Vasudev Aant*, 11 Bom., H. C., 15, approved. *ASMTU-NISSA BEGUM v. ASHURUR ALI* [I. T. R., 15 Cal., 488]

375. *Person claiming by title paramount to, or independently of, judgment-debtor*—Civil Procedure Code, s. 311.—Held that a person claiming by title paramount to, or independent of, the judgment-debtor is within the meaning of s. 311 of the Code. *ASMTU-NISSA BEGUM v. ASHURUR ALI*, I. T. R., 15 Cal., 488, distinguished from *Abdul Huj Mozoomdar v. Mohini Mohun Shaha*, I. T. R., 14 Cal., 240, followed. *SHRO PRASAD v. HIRA LAL* I. T. R., 12 All., 440

376. *Civil Procedure Code, s. 311—Application to set aside execution sale—Remedy of one claiming adversely to the judgment-debtor*.—A person alleging himself to be the undivided brother and, as such, the legal representative of a deceased judgment-debtor alleged to have set aside a sale of certain property applied to him to be joint family property, which had taken place in execution of the decree. Held that the proper remedy of the applicant was a regular suit, and not a proceeding under Civil Procedure Code, s. 311. *SUBBARAYAN v. PANDA SUBBARAYAN* [I. T. R., 16 Mad., 476]

377. *Civil Procedure Code, ss. 311, 295—"Decree-holder"*.—The term "decree-holder" in s. 311 of the Code of Civil Procedure is not limited to the decree-holder who instituted the execution proceedings, but may include a decree-holder who is entitled to come in and share in the proceeds under s. 295 of the Code. *Lakshmi v. Kuttum, I. T. R., 10 Mad., 57*, approved. *AGUDHA PRASAD v. NAND LAL SINGH* [I. T. R., 15 All., 318]

378. *Civil Procedure Code, s. 311—Application to set aside sale in execution—Decree-holder—Parties*.—The decree-holder is a necessary party to an application under s. 311 of the Code of Civil Procedure. Hence where a judgment-debtor applied under the above-mentioned section to have a sale in execution of a decree against him set aside and made no attempt to implead the decree-holder until long after limitation had expired, Held that the application must be dismissed. *Karnat Khan v. Mir Ali Ahmed, Weekly Notes (All.), 1891, p. 121*, referred to. *ALI GAVAN KHAN v. BANSIDHAR* . . . I. T. R., 15 All., 407

379. *Civil Procedure Code (Act XIV of 1882), ss. 311, 312, 313, 622—Application by auction-purchaser to set aside sale on ground of his having been deceived as to extent of estate sold—Remedy of auction-purchaser at a Court-sale, alleging that he had been*

SALE IN EXECUTION OF DECREES

—continued.

17. SETTING ASIDE SALE—continued.

HARADHANE SHAMUNTO v. GOLUCK CHANDER SHAMUNTO . . . 25 W. R., 79

[I. C. L. R., 250 MAINA KORE v. LUCHMAN BHUGUT

[I. T. R., 7 All., 583 MAN KVAR v. TARA SINGH

370. By whom application may be made—*Objection to sale by third person*—Civil Procedure Code, 1882, s. 311.—Held that persons other than the decree-holders or the persons whose property was sold in execution of decree were not competent to apply to the Court under s. 311 of the Civil Procedure Code to set aside the sale. *MAN KVAR v. TARA SINGH* . . . I. T. R., 7 All., 583

371. *Code of Civil Procedure (Act X of 1877), s. 311*.—The words "any person whose immovable property has been sold" in s. 311 of the Code of Civil Procedure do not include a person who has purchased the same property at a prior execution-sale, such prior sale not having been confirmed. In the matter of the PETITION of BHAGABATI CHURN BHUTTAOHARJEE CHOWDHRY, BHAGABATI CHURN BHUTTAOHARJEE CHOWDHRY v. BISHESHWAR SEN [I. T. R., 8 Cal., 367

372. *Civil Procedure Code, 1885, s. 311—"Any person whose immovable property has been sold"*.—The words "any person whose immovable property has been sold" in s. 311, are sufficiently wide to include a person who is neither the decree-holder nor the judgment-debtor, nor the auction-purchaser, but who alleges that the property sold in execution is his. *ABDUL HUG MOZOOMDAR v. MOHINI MOHUN SHANA* [I. T. R., 14 Cal., 240

373. *Civil Procedure Code, ss. 311, 295—Person entitled to apply to set aside sale—"Decree-holders"*, entitled to rateable distribution.—Where one decree-holder had attached certain land, and another decree-holder against the same debtor had entitled himself to rateable distribution of the assets under s. 295 of the Code of Civil Procedure, Held that the latter was entitled to apply, under s. 311 of the Code, to set aside the sale on the ground of material irregularity. *LAKSHMI v. KUTTUMNI* . . . I. T. R., 10 Mad., 57

374. *Civil Procedure Code, s. 311—Objection to sale by wife of judgment-debtor*.—A person who claims to be a purchaser from a judgment-debtor prior to an attachment is not entitled to come in under s. 311 of the Civil Procedure Code and object to the sale of the judgment-debtor's property. *Abdul Huj Mozoomdar v. Mohini Mohun Shaha*, I. T. R., 14 Cal., 240, overruled. Rule that a person applying to set aside a sale for

375. *Civil Procedure Code, s. 311—Objection to sale by wife of judgment-debtor*.—A person who claims to be a purchaser from a judgment-debtor prior to an attachment is not entitled to come in under s. 311 of the Civil Procedure Code and object to the sale of the judgment-debtor's property. *Abdul Huj Mozoomdar v. Mohini Mohun Shaha*, I. T. R., 14 Cal., 240, overruled. Rule that a person applying to set aside a sale for

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE—continued.

private purchaser of property sold in execution.—
A person who has purchased property which is set-
wards sold in execution of a decree obtained against
his vendor is not entitled under s. 310A of the
Civil Procedure Code to have the execution-sale set
aside. RAMONABRA DHONDO v. RAKHABAI
[I. L. R., 23 Bom., 450.]

390. Code, 1882, s. 310A—Right of beneficiary to apply
to set aside sale.—A beneficiary of a person whose
immovable property is sold has a right to apply to
have the sale set aside under s. 310A of the Code of
Civil Procedure. BASTI PODDAR v. HARI KRISHNA
PODDAR [I. C. W. N., 135.]

391. Code (Act XIV of 1882), s. 310A—Application
to set aside sale by purchaser from judgment-
debtor after auction-sale.—A purchaser at a private
sale from the judgment-debtor after sale in execution
has no locus standi to make an application under
s. 310A of the Civil Procedure Code. HAZARI RAY
v. BABRI RAY [I. C. W. N., 279.]

392. Code (1882), s. 311—Application by person not
party to decree.—Land having been sold in execu-
tion of decree, one claiming that it had been held by
the judgment-debtor benami for him applied that
the sale be cancelled under s. 311. He was not
a party to the decree, and on that ground his
petition was dismissed. Held that the fact of the
petitioner being a stranger to the decree did not
preclude him from obtaining the relief sought under
s. 311. TIRUMANA BANTIA v. MANABATA BHATTIA
[I. L. R., 19 Mad., 167.]

393. Code (1882), s. 311—Application to set aside sale
in execution.—Plea to jurisdiction of Court to
sell—Civil Procedure Code, s. 320.—Held that in
an application under s. 311 of the Code of Civil Pro-
cedure to set aside a sale in execution of a decree,
it is not competent to the applicant to raise, nor
to the Court to entertain, any plea to the jurisdiction
of the Court executing the decree, as, for example, a
plea that the property sold, or part of it, was
ancestral and ought to have been sold in accordance
with the provisions of s. 320 of the Code. SHIRIN
BAGAY v. AGHA ALI KHAN
[I. L. R., 18 All., 141.]

394. Application to
set aside sale—Grounds which alone may be taken.
—A Court to which an application under s. 311 of the
Code of Civil Procedure, to set aside a sale held in
execution of a decree, is made, is limited to the
grounds set forth in that section. If the Court fails
to find both a material irregularity in publishing
or conducting the sale together with consequent loss
to the applicant, it is bound to dismiss the ap-
plication and cannot set aside the sale upon other grounds not pleaded by the
applicant. Tassaduk Rasool Khan v. Ahmad

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE—continued.

was entitled to the relief sought. SHINIVASA
AYYANAR v. AYYANORAI PILLAI
[I. L. R., 21 Mad., 418.]

387. Code (Act XIV of 1882), s. 310A—Sale in execu-
tion of mortgage-decree—Application by mort-
gagor under s. 310A, Civil Procedure Code—
Transfer of Property Act (I of 1882), s. 104.
Rules framed under—Civil Procedure Code Amend-
ment Act (V of 1894).—Held by the Full Bench:
S. 310A of the Civil Procedure Code (Act XIV
of 1882, as amended by Act V of 1894) does not
apply to sales of mortgaged property under the
Transfer of Property Act (I of 1882). The rules
framed by the High Court (Circular order No. 13,
dated 27th April 1892) under the provisions of s. 104
of the Transfer of Property Act do not make s. 310A
applicable to such sales. Ashraf Ali Chowdhury v.
Net Lal Sahu, I. L. R., 23 Cal., 682, overruled.
Raja Ram Singh v. Churni Lal, I. L. R., 19 All.,
205, dissented from. Query—Whether a rule by
the High Court under s. 104 of the Transfer of
Property Act making s. 310A of the Civil Procedure
Code applicable to sales of mortgaged property under
the said Act would not be ultra vires. KARDAR NATH
RAY v. KATI CHURN RAY

[I. L. R., 25 Cal., 703]
2 C. W. N., 353
See DAKSHINA MOHUN ROY v. BASUKI DEBI
[4 C. W. N., 474]
where this case is explained and where it was
held that s. 104 of Transfer of Property Act is an
enabling section and the rules made by the High
Court (Circular order No. 13, dated 27th April
1892) under the provision of s. 104 do not limit
the applicability of the Code of Civil Procedure as
regards sales held in execution of mortgage decrees.

388. Code (Act XIV of 1882), s. 310A—Right to
apply under the section—Person who has contracted
to purchase land.—A person who has contracted
to purchase land, or an interest in land, does not by
such contract become the owner in equity of such land
or such interest (s. 64 of the Transfer of Property Act,
IV of 1882). He has a personal right against his
vendor or the assignee with notice of his vendor to
compel the latter by a suit for specific performance to
perform his contract: but he has no direct right over
the land. Held accordingly that a person who
had contracted to purchase certain land which was
subject to mortgage, and was sold in execution by
the mortgagee, was not the owner of the land, and
was therefore not entitled to apply to set aside
the sale under s. 310A of the Civil Procedure Code.
MADHRO CHINTAMAN WADKAR v. VASUDAY J.
KIRITKAR [I. L. R., 23 Bom., 181.]

389. Code, 1882, s. 310A—Civil Procedure Code Amend-
ment Act (V of 1894)—Execution-sale—"Person
whose immovable property has been sold"—Prior

17. SETTING ASIDE SALE—continued.

of the Code of Civil Procedure, under which a sale could be set aside on the ground of material irregularity in publishing or conducting it. *Nip. Komur Chuvackavutti v. Shama Soodamane* [6 W. R., 46] 7 Bom., A. C., 74

Viswanatha v. Basalingappa v. Sadasanappa 7 Bom., A. C., 74

401 *Act v. Jomayya* 401 *Civil Procedure Code (1859), as 811 and 822—Omission to transmit certificate to Court executing decree—* The omission to transmit to the Court executing the decree the certificate required by a 224, Civil Procedure Code, is a mere irregularity which would not vitiate the sale. *Abdulkarim v. Mondrin* 1 I. R., 20 Mad., 10

403. *Omission to make attachment—* It was doubted at one time whether a sale could be set aside by reason of an omission to attach the property. *Jovanvooz, Zorkha Khan v. Banne Madhav Narayan* 11 W. R., 238

404. *Civil Procedure Code, 1859, s. 201—Sale without attachment—* 405. *Sale of property without attachment—Deceit for money—Irregularity*

406. *The words "attachment and sale" in s. 201 must be taken together, and not distributively.* *Luchmickar v. Lakshma Roy* 8 W. R., 416

17 SETTING ASIDE SALE—continued.

Hussain, I. L. R., 21 Cal., 66 *I. R., 20 I. A., 176, and Sharin Begam v. Agha Ali Khan, I. L. R., 18 All., 141*, referred to. *Hannas Lal v. Khandan Lal* 18 All., 141, referred to.

395. *Civil Procedure Code, s. 311—Person whose property has been sold—Mortgagee—Transfer of Property Act (IV of 1882), ss. 86-87—The mortgagee of a certain tenant obtained, on 11th September 1884, under s. 86 of the Transfer of Property Act, a decree for foreclosure, which declared that, on failure to pay the amount*

Nath Mississ application Nakhai Churnam Bora v. Dwarka 1 I. R., 13 Cal., 346

laid down as a general proposition of law that under no circumstances can a sale in execution of a decree be set aside as against a bona fide purchaser for value consideration and without notice. In a suit brought to set aside such a sale, it is for the Court to determine whether it will be in accordance with the principles of justice, equity, and good conscience that the sale ought to be set aside or not. *Andru Hira v. Nawan Hira* B. L. R., Sup. Vol., 911

S. C. Abdul Hira v. Nawan Hira 11 W. R., 196

398. *Findings as to irregularity—Civil Procedure Code, 1859, s. 256—Material irregularity—On an application to set aside a sale of immovable property in execution of a decree under s. 256, Act VIII of 1859, before ascertaining whether any substantial injury has accrued to the debtor, it was held that the Court must come to a distinct finding that there has been an irregularity in publishing or conducting the sale. *Manvitt v. Ginnar Lal* 6 W. R., 125*

399. *Objections to sale being made absolute—Civil Procedure Code, 1859,*

SALE IN EXECUTION OF DECREE

17. SETTING ASIDE SALE—continued.

Held, following *Alhadeo Dubey v. Bhola Nath Ditchit*, I. T. R., 5 All., 86, that a regularly perfected attachment is an essential preliminary to sales in execution of decrees for money; and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void, and may be set aside without any inquiry as to substantial injury being sustained by the judgment-debtor for want of a valid attachment; and that an attachment before judgment, like a temporary injunction, becomes *functus officio*, as soon as the suit terminates. Further, that the phrase "a material irregularity in publishing or conducting" in the first paragraph of s. 311 of the Code of Civil Procedure should be liberally construed, and that absence of attachment of property at the time of sale thereof is "a material irregularity," attachment being the first step which a Court in executing a simple money-decree has to take to assert its authority to bring property to sale.

Ravi Chand v. Pritam Lal I. T. R., 10 All., 506

409. Omission to attach property—Decree on mortgage.—The omission to cause an attachment to be made in execution of a decree for the realization of a mortgage-debt does not affect the validity of a sale of the mortgaged property in execution of such decree.

Sing Chandra Pal Chowdhury v. Shri Chandra Pal Chowdhury I. T. R., 21 Cal., 689

410. Sale in execution held in pursuance of an attachment made under a wrong section of Civil Procedure Code—Civil Procedure Code, ss. 268 and 274—Irregularity in attachment.—*Held* that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction-purchaser, even though the attachment had been made under a wrong section of the Code of Civil Procedure.

Bal Krishna v. Masuma Bibi, I. T. R., 5 All., 142; *T. R., 9 I. A., 182; Alhadeo Dubey v. Bhola Nath Ditchit*, I. T. R., 5 All., 506; and *Karim-un-nisa v. Ram Chand*, I. T. R., 15 All., 134, referred to.

Shro Chaman Lal v. Shro Sanyal Lal I. T. R., 18 All., 469

411. Sale without previous attachment—Material irregularity.—*Held* that the absence of an attachment prior to the sale of immovable property in execution of a decree amounts to no more than a material irregularity, but is not sufficient, unless substantial injury is caused thereby, to vitiate the sale.

Ram Chand v. Pritam Lal, I. T. R., 10 All., 506; *Ganga Prasad v. Jag Lal Bai*, I. T. R., 11 All., 333; *Harbans Lal v. Kundan Lal*, *Weekly Notes*, All., 1898, 312; and *Tassaduk Rasul Khan v. Ahmad Husain*, I. T. R., 21 Cal., 66, referred to.

Mahadeo Dubey v. Bhola Nath

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SALE IN EXECUTION OF DECREE

17. SETTING ASIDE SALE—continued.

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SALE IN EXECUTION OF DECREES

—continued.

17. SETTING ASIDE SALE—continued.

the rights and interests of the judgment-debtor at the time of attachment and sale; and s. 252 of Act VIII of 1859 did not prohibit an enquiry into the extent of those rights, or declare the owner of the property attached in execution of a decree passed against a third party, incompetent to assert his claim by suit. The sale of movable property, belonging to a third party, in execution of a decree, was not a mere irregularity within the meaning of s. 252, and the owner of the property so sold was entitled to sue for its restoration, or for damages. **SHAM SUNDAR DAS v. KANERAM BAKSH** [6 N. W., 252] **MONAKHAR DORAB v. AKIAT ALYALDAB** [9 W. R., 118]

[9 W. R., 118]

422. Sale of portion of tenure under decree for rent—Sale of other portion under mortgage-decree.—Where decrees for

holders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage-decree against some of the judgment-debtors in the rent suits, on an objection being taken to the continuation of such sale on the ground that the whole tenure should have been sold in execution of the rent-decrees. *Held* that all that the decree-holders were entitled to have sold was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that consequently the mortgagee being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent-decrees was a good sale, and could not be set aside. **MOHAMMAD DRO COOMAR DUTT v. HEERA MOHAM COOMAR. ISANESWAR DAS v. GOPAL DAS DUTT** [L. L. R., 7 Cal., 723]

[L. L. R., 7 Cal., 723]

423. Sale of whole estate where a portion would suffice.—A Subordinate Judge, on the application of a judgment-creditor, ordered the attachment and sale of an indigo concern consisting of several factors, and fixed the 9th March for the sale. Shortly before the date so fixed, he issued a direction to the District Judge's nazir that the sale should be effected in portions to be sold in succession. Upon this the District Judge removed the execution proceedings to his own Court, and issued a roobokari declaring the Subordinate Judge's order null and void, and ordering the property to be sold on the day fixed in one lot. This was accordingly done. *Held* that it was entirely within the Subordinate Judge's discretion to direct that the property should be sold in portions, even though it had been attached or pro-

claimed as an entirety. *Held* that, as it is damage to a person to have his whole property sold against his will to satisfy the claims of a creditor when the sale of a portion would suffice, the irregularity committed by the District Judge caused material injury to the judgment-debtors. **ABDOOL HYE v. MACRAE** [23 W. R., 1]

SALE IN EXECUTION OF DECREES

—continued.

17. SETTING ASIDE SALE—continued.

and ordered a new trial. On the 6th May 1866 the District Judge affirmed the decree of the Court of first instance. On the 3rd December 1866 the High Court again set aside the Judges' decree and ordered a new trial. On the 11th January 1867 the District Judge again affirmed the decree of the Court of first instance, and no appeal being preferred, the decree became final. The decree-holders had in the meantime taken proceedings to execute the decree, dated the 6th May 1866, and from time to time and finally on the 7th November 1870 they renewed these proceedings, in each instance referring to the decree dated the 6th May 1866, even after it was set aside, and the decree dated the 14th January 1867 passed. On the last application a sale of certain immovable property belonging to K was ordered and took place on the 16th February 1871. A objected to the confirmation of the sale on the ground of the irregularity in the application, but his objections were disallowed and the sale was confirmed. He brought a suit to recover possession of the property from the auction-purchaser on the ground that the sale was a nullity. *Held per STUART, C.J., and PARSONS, JUDGES, and STARR, J.J.*, that the sale ought not to be set aside, as the irregularity in applying for execution of the decree, dated the 6th May 1866, was an irregularity which did not prejudice the judgment-debtor. *Per O'DRISCOLL, J.*—That with reference to s. 257, Act VIII of 1859, the suit was not maintainable. **GHANAI v. KADAM BAKSH** [I. L. R., 1 All., 212]

[I. L. R., 1 All., 212]

419. Irregularity in Confirmation of sale—Objection that property is not liable to attachment—Civil Procedure Code, 1859, ss. 278, 311, 312.—Held that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become a surety, that he was no party to the decree, and his property was not liable to be attached and sold, and therefore the sale was not an objection entitling him under s. 311 of the Civil Procedure Code, and was consequently no ground for setting aside the sale under that section, especially as it was preferred for the first time on appeal, and, moreover, might have been taken under s. 278 at the time of attachment, when the objector would have had his remedy as therein provided. **HAR LAT v. KANHA LAT [I. L. R., 7 All., 365]**

per STUART, C.J., and PARSONS, JUDGES, and STARR, J.J., that the sale ought not to be set aside, as the irregularity in applying for execution of the decree, dated the 6th May 1866, was an irregularity which did not prejudice the judgment-debtor. *Per O'DRISCOLL, J.*—That with reference to s. 257, Act VIII of 1859, the suit was not maintainable. **GHANAI v. KADAM BAKSH** [I. L. R., 1 All., 212]

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420. Sale of property other than that hypothecated.—A decree-holder is not precluded from taking any of his judgment-debtor's property in execution of his decree merely because he had a lien on particular property. A sale therefore is not liable to be set aside because the property sold was other than that hypothecated in the bond. **LATJEE v. SADIE HOSSAIN [4 N. W., 99]**

per STUART, C.J., and PARSONS, JUDGES, and STARR, J.J., that the sale ought not to be set aside, as the irregularity in applying for execution of the decree, dated the 6th May 1866, was an irregularity which did not prejudice the judgment-debtor. *Per O'DRISCOLL, J.*—That with reference to s. 257, Act VIII of 1859, the suit was not maintainable. **GHANAI v. KADAM BAKSH** [I. L. R., 1 All., 212]

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SALE IN EXECUTION OF DECREE —continued.

17. SETTING ASIDE SALE—continued.

One of them, in execution of his decree, had the zamindar put up for sale in one lot subject to the bank's mortgage, and with the leave of the Court purchased it himself. The other decree-holders applied to have the sale (which had not been confirmed) set aside on the ground of material irregularity in publishing the sale by which substantial injury was caused to them. The irregularities relied on were that the proclamation was not issued in the prescribed form, and did not state the extent of the property and the revenue assessed on it, or the amount of income derived from it, and no mention was made of the order of the High Court. *Held* that the sale should not be confirmed. **ATVARA CHETTI v. KAMAKSHINA NAYAKAN** [I. L. R., 21 Mad., 51]

See Lakshmi v. KUTUMBI [I. L. R., 10 Mad., 57]

434. *Sale of property otherwise than as advertised—Proof of damage—Advertisement of sale.*—When property is advertised to be sold in separate lots, and is afterwards sold in a lump, this is an irregularity, but the person who wishes to set aside the sale on the ground of such irregularity must show affirmatively, to the satisfaction of the Court, that substantial damage has, in fact, been sustained by him on account of such irregularity. Where therefore such damage had not been distinctly proved, *Held* that the sale could not be set aside on the ground of the irregularity complained of. **ROY NANDPAT MAHTA v. URQUHART** [4 B. L. R., A. C., 181; 13 W. R., 209]

435. *Sale of property in separate lots instead of in one lot as advertised in proclamation of sale.*—A attached a decree which B, his judgment-debtor, had obtained against C, and in execution thereof he brought to sale land belonging to C. After the publication of the proclamation of sale, one of the advertised lots was subdivided into various lots for the purposes of the sale. B applied to have the sale set aside, and his application was refused. *Held*, on appeal by B, that the appealant was not entitled to the relief sought by him. **SAMI PILLAI v. KRISHNAN CHETTI** [I. L. R., 21 Mad., 417]

436. *Omission to make proclamation of sale—Civil Procedure Code (Act X of 1877), s. 311—Irregularity in publication of intended sale.*—An objection to the validity of a sale of revenue-paying land, on the ground that the revenue assessed upon it had not been stated in the proclamation of the intended sale, in accordance with s. 287 of Act X of 1877, was taken, for the first time, in the Court of Appeal; on application to set aside the sale, on the ground that it had taken place without proclamation made, having been rejected by persons held money decrees against the zamindar.

17. SETTING ASIDE SALE—continued.

Whether such omission was an irregularity in "publishing or conducting" the sale within the meaning of s. 311 of that Act. **MAK-DONISA BIR v. ILAKAT HOSAIN** [I. L. R., 3 All., 424]

438. *Omission to re-issue process after proceedings have been struck off.*—After the striking off of an execution case, the omission to re-issue the process required by law on the admission of a third party as decree-holder is not a material irregularity in the case. **BIHAR DIXIT SINGH v. KRUPESHVAR** [W. R., 1864, 359]

439. *Death of decree-holder.*—The issue of a notice of sale after the death of the original decree-holder, and before any person had applied to be registered as the substituted decree-holder, is not an irregularity which would warrant the setting aside of a sale under Act VIII of 1859, s. 256. **GOWIND CHUDDER ALOOH v. BAKSH DOSS MOORTHY** [22 W. R., 481]

431. *Irregularity in notice of sale.*—Proclamation of notice of sale.—The main village of Chundampuri was sold by auction under a decree. The notice of sale stated that the sale would begin either at Mungim or Chundampuri, and be completed at Mungim. *Held* that the notice of sale was sufficiently certain. The practice of karnas reading aloud notices of sales on property about to be sold by auction is objectionable, but in the absence of proof that the value of the property has been thereby deteriorated, it is not such an irregularity as will vitiate the sale. **GOWIND HARI VATHAKAR v. BANK OF INDIA. BANK OF INDIA v. RAGHO NARAYAN** [4 Bom., A. C., 164]

432. *Irregularity in giving particulars of sale.*—Omission to mention numbers, etc., of notes—Sale and production of notes—Civil Procedure Code, 1859, ss. 201, 238, 248, 249.—The omission in a sale proclamation to mention particulars as to the numbers, value, etc., of Government promissory notes under attachment for sale is not such an irregularity as will vitiate the sale, though the lower Court would have exercised a sound discretion, under s. 249 of the Code, if it had called for such particulars. The sale of such notes through a broker is permissive under s. 248, and not obligatory. The production of the notes in Court was not essential, as they were in the custody of the Collector; s. 237 applying to cases in which property is in the possession or power of the judgment-debtor. **LUCHMIPUT v. LAKSHMI ROY** [S. W. R., 415]

433. *Proclamation of sale not in prescribed form and without necessary particulars.*—Right of holders of other decrees to object—Civil Procedure Code, 1882, ss. 311, 314.—A zamindar mortgaged his estate to a bank and the mortgagee obtained a decree in the High Court, in execution of which it was ordered that the zamindar should be sold village by village. Other persons held money decrees against the zamindar.

17. SETTING ASIDE SALE.—continued.
Omission to give

440.—constitute an irregularity in the sale entitling the plaintiff to claim damages under a 252, Act VIII of 1859. KANKEK NATH ROY CHOWDHURY v. HUL-
LOONATH ROY
2 W. R., 60

441.—Omission to state amount of decree.—Civil Procedure Code, 1852, s. 311.—The mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation, is not a material irregularity within the meaning of s. 311 of the Civil Procedure Code (Act X of 1859). JAGANNATH DAS v. GOPAL DAS DUTT
[1 L. R., 7 Calo, 723

442.—Omission of material part of notification of sale.—The sale notice

was advertised to be sold. Without this special notification, buyers would be summoned for one day, whereas the property might not be sold on that day, or to several days after, and that would be an irregularity which would vitiate the sale, if the property were sold at an under-value for want of bidders. DEWAT NATH SAMBAT v. DEWAT NATH BHANU
[24 W. R., 240

443.—Irregularity in affixing notification of sale.—The selling, in the Principal Mudder Amena's Court, of a notification of sale in execution of a decree of the Small Cause Court

the judgment debtor in person, or in the village in which he lives. HONZEK CHUNDER BANERJEE v. JADU CHUNDER CHATTERJEE
[6 W. R., Civ App., 14

444.—The affixing of a notice of sale in a not very conspicuous part of the land, when the judgment-debtor resides in a different district, is not
[14 W. R., 44
KANKOO HOSSAIN v. LAMP MONTAGUE BANK
enforcement. HANKROO HOSSAIN v. ALKAZER, His
trust Court, the publication of the notice of sale at one

17. SETTING ASIDE SALE.—continued.
the Court of first instance, which found that procla-

SALE IN EXECUTION OF DECREE

—continued.

from it, remaining to be proved, as required by s. 311 of Act X of 1877. Held also that inadequacy of price having been proved to be the effect of the non statement of the revenue, the applicant had not (as required by s. 311) proved to the satisfaction of the Court that he had sustained substantial damage by reason of such irregularity. MAHARAJA PRAHMAN SINGH v. I. L. R., 9 Calo, 656

S C OPLENANTS v. MAHARAJA PRAHMAN SINGH
[1 L. R., 101 A, 25
reversing decision of High Court in MAHARAJA PRAHMAN SINGH v. OPLENANTS
9 C. L. R., 134

447.—Error in proclamation of sale as to incumbrances to which property was liable.—Civil Procedure Code, 1852, ss. 311, 312.—In a sale of immovable property in execution of a decree, the proclamation of sale notified that

must have materially vinted the fairness of the auction and affected the price, and that the sale must therefore be set aside on the ground of material irregularity in publishing and conducting it. KANT MAT v. SATTO
[1 L. R., 8 A, 116

448.—Civil Procedure Code, 1852, ss. 257, 311.—"Material irregularity" in publishing or conducting a sale.—Omission to

the meaning of s. 311 of the Code. On such an irregularity being committed, the judgment debtor whose lands have been sold in *prima facie* entitled to be given an opportunity for proving that he has sustained substantial loss by reason of it. MAHARAJA PRAHMAN SINGH v. I. L. R., 23 Mad., 629

438.—Error in execution of decree.—A sale in execution of a decree is not invalidated by the fact that the balance really due is overpaid, there being no other irregularity in the publication and conduct of the sale. CHITTAI SIVA v. DUTTA KOOHAT
[1 W. R., Part 2, p. 1: Ed. 1873, 61

SALE IN EXECUTION OF DECREES

—continued.

17. SETTING ASIDE SALE.—continued.

Procedure Code (Act X of 1877), ss. 274, 289, 311—Under ss. 289 and 274 of the Civil Procedure Code it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. *KATYARA CHOWDHURAI v. RAM COOMAR GOOPTA*

[I. L. R., 7 Cal., 466 : 9 C. L. R., 114]

Irregularity in publication of sale—Material irregularity in

Procedure Code (Act X of 1877), ss. 287, 289.—Upon an application to set aside a sale in execution of a decree, on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by s. 289 of Act X of 1877; that no affidavit as to search having been made in the Registry office with regard to incumbrances as required by s. 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale.

[I. L. R., 8 Cal., 932]

Proclamation of sale—Civil Procedure Code (Act XIV of 1882), ss. 289, 311—Substantial injury.—A sale of revenue-paying land is not *ipso facto* void by reason of a copy of the sale-proclamation not having been fixed up in the Collector's office as required by s. 289 of the Code of Civil Procedure. An omission so to fix up such notice is an irregularity, the remedy for which can only be by an application under s. 311. *NANA KUMAR ROY v. GOLAN CHUNDER DAX*

451.

Evidence of such irregularity in publication of sale—

Procedure Code (Act X of 1877), ss. 274, 290, 291, and 295—Sale to satisfy judgment-creditor who has not attached.—The proclamation of sale required by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Three months were attached in execution of decrees obtained by A and B. Prior to the sale, C, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the months were sold,

SALE IN EXECUTION OF DECREES

—continued.

17. SETTING ASIDE SALE.—continued.

sufficient to satisfy the requirements of justice. *GO-BIND CHUNDER MOOKERJEE v. RAM KUNTI CHATTERJEE*

25 W. R., 384

Irregularity in publication of sale—Beng. Reg. XIV of 1793, s. 12—*Delay.*—A suit was brought in 1852 to set aside an execution-sale made in 1841 on the ground of irregularity in not complying with the provisions of Bengal Regulation XIV, s. 12 of 1893, for the due publication of the sale. A summary suit under Bengal Regulation VII of 1825, s. 5, had been brought shortly after the date of the sale by the judgment-debtor, to set it aside on the ground of inadequacy of the purchase-money, which suit was dismissed. There was no allegation in that suit of any irregularity in the publication of sale. It appeared from the evidence in the suit of 1852 that the notice of sale was affixed at the dwelling-house of the judgment-debtor, the place where his rents were paid, but which was not part of the estate sold. It was not pleaded in the suit of 1852 that there was a town or village where the notification could be fixed as required by s. 12, Bengal Regulation XIV of 1793. The Sudder Court held that there had been an irregularity in the publication of the notice of sale; and set the sale aside on that ground. On appeal, *Held* by the Judicial Committee reversing such decree, first, that as it did not appear that there was any town or village within the parganna at which the notification required by the provisions of Bengal Regulation XIV of 1793, s. 12, could be affixed, there had been no irregularity in posting the notice at the house of the judgment-debtor, so as to vitiate the sale; and secondly, that even if there had been an informality in that respect, it ought to have been objected to in the summary suit brought in 1841, and could not be opened eleven years afterwards. *LAMB v. BHOJ KISHEN DASS*

447.

Execution-sale of groups of property under one decree—Irregularity and damage, their necessary relation—Code of Civil Procedure (Act XIV of 1882), ss. 289 and 311.—The words "on the spot where the property is attached" in s. 289 of the Civil Procedure Code refer to each property attached, and not to a group of separate properties attached under one proceeding or order in one execution case, and therefore when distinct properties are proclaimed for sale in one execution, the omission to affix a copy of the proclamation in each of such properties amounts to an irregularity in the publication of the sale. *Held* also that, where there is no evidence to connect the two elements of irregularity and injury under s. 311, it must appear, before a Court can set aside an execution-sale, that the injury complained of is the reasonable and natural consequence of the irregularity, and attributable to it alone. *THIRUBA SUNDARI v. DURGA CHURN PAI*

448.

Irregularity in publication of sale—Material irregularity in Civil

SALE IN EXECUTION OF DECREE

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17. SETTING ASIDE SALE—continued

and realized more than enough to satisfy the desires of A and B . The third was then sold in satisfaction

I A, 280, distinguished
+ LEHMAN AND SIKH
[T. L. H., 7 Calo, 613 9 C. L. R., 398
454] Irregular pub-
lication of reproduction of [Sole held by you]

lter. *Heid* also that the Deputy Commissioner was not entitled to proceed upon the report of the Taxar and Court-com, but was bound to hear the evidence considered by the judgment debtor, though he was justified, under s. 281, in postponing the sale as he had done. *Heid* further that the third judgment creditor, who had not attached the property, was well entitled to have the sale proceeded with and his decree satisfied under the provisions of s. 205 Meqon Lat. Pooran & Smt Kesham Mady

S. C. MEAN TAT POORKE & MONARD DUTT JIA
[L. L. H., 1 CIRC, 22
16 C. L. R., 369]

453. Irregularity in publication of sale—Omission to lead drum—Material irregularity—Omission to have a drum beaten as required by ss 280 and 274 of the Civil Procedure Code (Act XIV of 1882) held to be a material irregularity as to render a sale void in execution v. NAMA a decree liable to be set aside Thiruvananthapuram 6049.

463. _____Irregularly in publishing, and conducting a sale—Walter of

arrangements they were making for the purpose of paying off the debt, and stating that the decree

1701
 sale-proclamation, and that consequently they had irregularly in the publication of the attachment and on the ground that there had been no notice of the sale, and asked to have the writ set aside and objected to the sale, and subsequently the judgment debtors came in place. That petition being refused, the sale took place, and afterwards and advised the proper authorities.

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE—continued.

by reason of such irregularity. *Olpheys v. Mahabir Pershad Singh, L. R., 10 I. A., 25; Megh Lal Poore v. Shih Pershad Madh, I. L. R., 7 Cal., 34; Kalyata Choudhary v. Ramcoomar Goopla, I. L. R., 7 Cal., 466; Tripura Sundari v. Durga Churn Pal, I. L. R., 11 Cal., 74; Bonomali Mozumdar v. Woomesh Chunder Bundopadhyay, I. L. R., 7 Cal., 730; Bundu Ali v. Madhub Chunder Nag, I. L. R., 8 Cal., 932; Nothun v. Harbhuj, Weekly Notes, All., 1885, p. 304; Jasoda v. Mathura Das, I. L. R., 9 All., 511; and Bakshi Nand Kishore v. Malak Chand, I. L. R., 7 All., 289, referred to. GANGA PRASAD v. Jag Lal Rai [I. L. R., 11 All., 338]*

461. —*Proclamation of sale—Sale before hour fixed—Civil Procedure Code (Act XIV of 1882), s. 287—Sale set aside as being no sale.*—A property, advertised for sale under s. 287 of the Code of Civil Procedure, was sold on the day fixed, but at an earlier hour than that stated in the proclamation. *Held* that there had been no sale within the meaning of the Code, proclamation of the time and place of sale and the holding of the sale at such time and place being conditions precedent to the sale being a sale under the Code. *BASHARUTTULAH v. UMA CHURN DUTT* [I. L. R., 16 Cal., 794]

462. —*Property sold before advertised time—Sale invalid.*—A sale by public auction in execution of a decree, which is conducted at a time and place other than those properly notified, is not a sale at all within the meaning of the Civil Procedure Code. The time to be notified for a sale by public auction in execution of a decree must be the time of the commencement of the sale, in order that all intending purchasers may be enabled to be present during the whole of the proceedings, and that all who are interested in the property sold may see that there is a fair competition and a good sale. Where property which was advertised for sale by public auction in execution of a decree at 11 A.M. was sold at 7 A.M.,—*Held* that the mistake was more than a mere irregularity in conducting the sale, and that the whole of the proceedings were invalid. *CHANDANI LAL v. AMIR BEE I. L. R., 7 All., 676*

463. —*Property sold before advertised time.*—Where the fact of an execution-sale having taken place about two hours earlier than the hour announced was alleged to be a material irregularity seriously prejudicial to the interests of the judgment-debtor, it was held to be the bounden duty of the Court to take evidence and determine whether bidders had been prevented from attending, and whether an irregularity of a material kind had occurred. *KHODIYA BEBEE v. KANU NARAIN DAI* [12 W. R., 511]

464. —*Property not sold at advertised time—Alteration in sale order.*—Where property is advertised to be sold in execution, a change in the specified order of sale or other sudden

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE—continued.

latter section requires affirmative evidence. *TASAD-DUK RASUL KHAN v. AHMAD HUSAIN* [I. L. R., 21 Cal., 66 I. R., 20 I. A., 176]

458. —*Civil Procedure Code, s. 311—Material irregularity in publishing or conducting sale—Substantial injury—Held after date advertised—Civil Procedure Code, ss. 287, 290.*—Where a proclamation of sale of immovable property in execution of a decree omitted to state the place of sale, and where the sale took place on a date other than that notified in the proclamation, and before the expiration of the thirty days required by s. 29 of the Civil Procedure Code,—*Held* that the non-compliance with the provisions of ss. 287 and 290 of the Code was more than mere irregularity, that it must have caused substantial injury, and that the order conducting the sale must be set aside. *Bakshi Nand Kishore v. Malak Chand, I. L. R., 7 All., 289, referred to. Per MANMOOD, J.—Quære whether material irregularities such as the above were not in themselves sufficient, within the meaning of the first paragraph of s. 311 of the Code, to justify a Court in setting aside a sale, without inquiring whether such irregularities had resulted in substantial injury within the meaning of the second paragraph.* *JASODA v. MATHERA DAS* . I. L. R., 9 All., 511

459. —*Civil Procedure Code, s. 290—Ground for setting aside sale.*—The infringement of the provisions of s. 290 of the Civil Procedure Code is not a mere irregularity, but it vitiates the sale. *Bakshi Nand Kishore v. Malak Chand, I. L. R., 7 All., 289. SADBANSAN SINGH v. PANCHDEO LAL* . I. L. R., 14 Cal., 1

460. —*Civil Procedure Code, ss. 290, 311—Sale of immovable property in execution of decree—Sale held before expiration of thirty days from the proclamation—Application by judgment-debtor to set aside sale—“Illegal”—“Material irregularity”—“Proof of substantial injury whether necessary.”*—Where a sale of immovable property in execution of a decree took place before the expiration of the thirty days required by s. 290 of the Civil Procedure Code, and without the consent of the judgment-debtor,—*Held* by *EDS, C.J. (BRODHURST, J., dissenting)*, that the holding of the sale under these circumstances was not merely an irregularity within the meaning of s. 311 of the Code, but was an illegality, and that it was open to the judgment-debtor to object to the sale and to apply to have it set aside on the ground of such illegality, without proving that he had sustained any substantial injury. *Held* by *BRODHURST, J.*, contra, that infringement of the rule contained in s. 290 of the Code does not of itself vitiate a sale in execution of decree, but is a “material irregularity” within the meaning of s. 311,—that expression being wide enough to include illegality,—and that before such a sale can be set aside, the judgment-debtor must prove that he has sustained substantial injury

SALE IN EXECUTION OF DECREE

—continued*

17. SETTING ASIDE SALE—continued.

Advertisement of _____

may be adjourned with the consent of the parties.

470. Postponement of sale—Postponement without valid reason—Held

the postponement. But the attention of the Court was called to the importance of abiding by the date fixed in the proclamations of sale as far as possible, and not postponing sale without good reason. As-
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471. *Rule-Civil Procedure Code, 1859, s. 843.*—When property has been put up for sale at auction in execution of a decree, and bids have been made for it, the Court is not competent to postpone made for it, the Court is not competent to postpone

private transfer, there being shown no ground to believe that the amount of the judgment-debt would have been thus realized. LONDONER NAVAYN a. PUNNOO KRISHNAH

472.—Sale, postpone-
ment of, for benefit of debtor
The sale took place as far as possible on the day
fixed, but was publicly put off to the next day, when,

473. Postponement of
sale—Civil Procedure Code, 1859, s 249—Ground

execution of a decree of land paying revenue to Government should not be granted where it is not alleged that satisfaction of the decree might be made within a reasonable period by a temporary alienation of the land. JAINES HAN & BIRAI ROOP

grounds for selling said sale—Sale contrary to
 order for postponement—Mistake—Where an
 execution took place under an order obtained
 without a return on the part of the de-
 fendant, as to a petition by the judgment-debtor
 for a postponement, the petition so commenced

STATE IN EXECUTION OF DECREE

17. SETTLING ASIDE SALE—continued

substitution of programme, without notice to in-

remains binder, or the express contract of the judgment-debtor, was an irregularity under a 256, Code of Civil Procedure, 1859, violating the sale. Porubay Singh v. Gossain Mubay Books.

485. _____ Property not

[illegible]

466. Allegation of property after advertising for sale—Mistakeal irregularity.—The property of a judgment debtor was proclaimed and advertised for sale in ex-

was released to a third party. Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed. He did not take any part in the fresh proclamation, and the omission to make a fresh proclamation was a material irregularity, inasmuch as the judgment-debtor was

SINGH, I. L. R., 3 Calo, 644: 2 C. L. R., 280

Where property intended to be sold in execution of a
broken up into lots—Separate proclamations—
Covers as are and not—Proclamations—Property

we really at such a distance that there is no moral certainty of communication to persons on or interested in the one of what is publicly done on the other. There should, no doubt, be a separate proclamation on each, in order that full information may be given of what is to be done.

ADDRESS BY . I. I. R., 19 BOM., 368

Adjournment

408.

[illegible]

—continued.

17. SETTING ASIDE SALE—continued.

having been by mistake afterwards presented to and filed by the judgment-debtor in the wrong Court, *Held* that the judgment-debtor was entitled to a decree in a suit brought to have the sale set aside, no title having passed thereby. GANGA PERSHAD SANKU v. GOPAL SINGH

[T. L. R., 11 Cal., 136; T. L. R., 11 A., 234

475.

Postponement of sale—Sale after order postponing sale where order arrives too late to stay sale.—When a Court executing a decree passes an order postponing a sale, and the sale takes place notwithstanding, in consequence of the order arriving too late, the Court is justified in setting aside the sale on the ground of irregularity, and its order doing so is not appealable.

MAITHA SINGH v. JHOW LAT. 6 N. W., 354

476.

Order for postponement made before, but arriving at Collector's office after, sale—The High Court passed an order postponing a sale in execution of a decree, which order arrived at the Collector's office the day after the sale. *Held* that the publication of the sale was irregular, as the order of postponement invalidated the notification of sale.

NONIDH SINGH v. SONUN KOOR. 14 N. W., 135

477.

Order for postponement arriving after sale had been held—Civil Procedure Code, 1877, ss. 311, 312.—On the day fixed for the sale of certain immovable property in the execution of a decree, the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, on application having been made to set aside the sale, passed an order continuing it. Subsequently, an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal. *Held* that the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid; and in reviewing its first order and in setting aside the sale as illegal, the Court executing the decree had not acted *ultra vires* and its action was not otherwise illegal.

[T. L. R., 2 All., 686

478.

Sale held after postponement by Court—Order for postponement not reaching the conducting officer—Material irregularity in conducting sale—Civil Procedure Code, s. 311.—The Court executing a decree passed an order postponing a sale in execution, but the order failed to reach the officer conducting the sale, and the sale was consequently held. The judgment-debtor applied to have the sale set aside as void. *Held* that the effect of the Court's order for postponement of the sale was to deprive the officer of all legal authority to hold it on the date previously fixed; that his not being aware of the order was not material; that the defect in the sale amounted to an illegality and not merely to an irregularity within the meaning

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17. SETTING ASIDE SALE—continued.

of s. 311 of the Civil Procedure Code; that consequently it was not necessary to show that the defect had caused substantial loss to the judgment-debtor; and that the Court could not confirm the illegal sale, but must hold it to be void. *Sukhdeo Rai v. Shree Ghulam, I. L. R., 4 All., 332; Ram Dyal v. Mahatab Singh, I. L. R., 3 All., 701; and Ganga Prasad v. Jag Lal Rai, I. L. R., 11 All., 333*, referred to. SANT LAT v. UMRAO-UN-NISSA

[T. L. R., 12 All., 96

479.

Code of Civil Procedure (Act XIV of 1882), s. 545—Order passed by Appellate Court for stay of execution—Sale held before communication of such an order.—An order of an Appellate Court under s. 545, Civil Procedure Code, to stay execution of a decree against which an appeal is pending, is in the nature of a prohibitory order, and as such would only take effect when communicated. If a property is sold before such an order is communicated to the Court holding the sale, such sale is not void and cannot be treated as a nullity. *Powdar Khan v. Baines Doohey, 3 Agr., 398; Maitha Singh v. Jhow Lat, 6 N. W., 354; and Mian Jan v. Mian Singh, I. L. R., 2 All., 686*, distinguished. BISSWAR CHOWDHURY v. HIRRO SUNDAR MOZUMDAR

[1 C. W. N., 226

480.

Postponement of sale—Proclamation of adjourned sale.—A proclamation of thirty days is necessary when the property is first advertised for sale, not when the sale is postponed for the convenience of the debtor. S. 225 of the Civil Procedure Code, 1859, related to a resale, and not to a postponed sale. *BUDREE NATH SHUKT v. CHUNDRA SHEKUR MIAN SINGH*

[1 W. R., 118, 3

NOORUL HOSSAIN v. OKATPOOL FATMA

[25 W. R., 34

481.

Postponement of sale—Necessity for fresh proclamation.—Where a sale is postponed, a fresh notice and proclamation ought to issue. *SHOSHNE MOOKHERJEE v. DWARKANATH BISWAS*. 6 W. R., 118, 84

482.

Postponement of sale—Notice—Necessity for fresh proclamation—Act VIII of 1859, s. 249.—Where a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the day to which the sale has been postponed. It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor. *GOORAMAT DOWRY v. ROY LUDHAMSEV SINGH, I. L. R., 3 Cal., 542; 1 C. L. R., 349*

OKHAY CHANDER DUTT v. BASKINE

[3 W. R., 118, 11

17. SETTING ASIDE SALE—continued.
—continued.
SALE IN EXECUTION OF DECREE

489. *Insufficient notice of sale—Necessity for fresh notification.*—Where a sale was notified to take place on the 6th, and on that day the order for the

18 W R, 347
FERRIS CHAND
484 *Necessity for fresh proclamation—Where Postponement*

1 L R, 11 Calo, 259
S C HERNANDEZ VASQUEZ : BERNARDO PERNAND
14 C L R, 23
See also BERNARD KOOPAL : BERNARD LALU
1 L R, 11 Calo, 878
488 *Civil Procedure Code (Act XII of 1852), s 291—Omission by court to issue fresh proclamation of sale after adjourn-*

2 N W, 143
[2 N W, 143
485. *Omission to take place* SAVITA SINGH & MAHARAJ RANDEY
fresh proclamation of the sale and date when it is to

1 L R, 18 Calo, 498
B HANSENBERG MOWDOL
489. *Agreement on postponement of sale—Civil Procedure Code, 1852, s 249—An execution sale, which had been fixed for a certain date, was put off to the*

that he would not object to any irregularities affecting the application of the judgment-debtor, who consented to the postponement of the sale in the following month on the

486. *Indefinite postponement.*—C. L. R. 237
that the sale was postponed, and an inquiry instituted as to what share in the judgment creditor, the irregularity is one that has

487. *Civil Procedure Code, 1877, s. 290—Consent—Lapse of time.*—PARNAS SINGH
made of the sale. JUDHOKER CHOWDHURY & HANUJA

481. *Sale on close holiday—Irregularity in publication or conduct of sale—The sale of immovable property by an auctioneer*
JADUN CHANDER HODDA : S W. R., 24
be considered such a "consent" as, by virtue of s 290 of Act X of 1877, would do away with the necessity of a proclamation for sale being issued

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE—continued.

is also the law under Act XIV of 1882; but such a purchase may be set aside by the Court on application under s. 294 as being irregular. PARASASTA v. KRISHNA. I. L. R., 14 Mad., 498

497.

Purchaser by judgment creditor without leave of Court—Remedy of judgment-debtor.—Where a judgment-debtor without leave of Court buys the property of his judgment-debtor at a Court-sale, the remedy of the latter is by application under s. 294 of the Civil Procedure Code (Act XIV of 1882), and not by separate suit. GANDU v. SAKHARAM. I. L. R., 22 Bom., 271

498.

Civil Procedure Code (Act XIV of 1882), ss. 294, 311—Application to set aside sale—Leave to bid—Assignee of decree under oral assignment.—Where the auction-purchaser at a sale in execution of a decree had been executed, *Held*, that the auction-debtor to purchase the decree for a certain sum of money which, however, was not paid till after the sale merely entered into an agreement with the decree-holder to purchase the decree for a certain sum of money which, however, was not paid till after the sale, and no instrument of assignment of the decree had been executed, *Held*, that the auction-purchaser was not a decree-holder within the meaning of s. 294, Civil Procedure Code. An assignee of a decree under an oral assignment has no *locus standi* at all to apply for the execution of a decree, and it is not necessary for such an assignee to obtain leave to bid at the sale held in execution of a decree. DAKSHINA MOHAN ROY v. BASUMATI DEBI. [4 C. W. N., 474

499.

Purchaser by decree-holder—Refusal of application by judgment creditor to be permitted to bid at sale—Invalidity of sale.—A mortgagee, having obtained a decree of sale—*Civil Procedure Code (Act XIV of 1882), s. 294*—The defendant contended that, inasmuch as the plaintiff (decree-holder) had been refused leave to bid at the sale, his purchase could not be enforced. *Held*, that the plaintiff had been guilty of an abuse of the process of the Court in bidding at the sale and buying the property because, and that the sale therefore ought not to be enforced. MAHOMUD GAZI CHOWDHRY v. KAM LALL SEN. I. L. R., 10 Cal., 757

500.

Purchaser by decree-holder—Material irregularity—Dismissing holder related to manager of defendant.—When liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE—continued.

on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale. RISHAM MAHTON v. SAHIB-UN-NISSA. I. L. R., 3 All., 333

492.

Sale under two separate decrees—Separate sales.—Where the Court executing two decrees made separate orders directing the sale on the same date of certain immovable property in execution of such decrees, the officer conducting the sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was therefore not an irregularity in the conduct of the sales. COURT OF WARDS v. GAYA PRASAD. I. L. R., 2 All., 107

493.

Purchaser by decree-holder without permission of Court.—A sale at which the decree-holder himself, or some other person for him, without the permission of the Court first obtained, becomes the purchaser, is not *ipso facto* void; it is a good sale, unless and until set aside by the Court under the provisions of s. 294 of the Civil Procedure Code, 1877. JAVHERBAY v. HARBHAI. [6 B. L. R., 5 Bom., 575

IN THE MATTER OF VEERAPAH CHETTY

[6 B. L. R., 5 Bom., 575

494.

Purchaser by decree-holder without permission of Court—Civil Procedure Code (Act XIV of 1882), ss. 294, 311—Substantial injury.—Under the terms of s. 294 of the Civil Procedure Code, it is discretionary with the High Court to set aside an execution-sale at which the decree-holder has bid and purchased without first obtaining permission from the Court so to do; and in dealing with such a case, the Court, although considering the matter as an irregularity in the conduct of the sale, will not interfere with the sale, unless it can be shown that the judgment-debtor has suffered some substantial injury arising from such irregularity. MATHERA DAS v. NATHUNI LALL MAHTA. I. L. R., 11 Cal., 731

495.

Civil Procedure Code, 1882, s. 294—Validity or otherwise of sale.—In a suit in which it was contended that a purchaser at a sale in execution of a decree had, under s. 294 of the Civil Procedure Code, taken nothing by the purchase because he was the holder of the decree in execution of which the property was sold, it was held, following *Javherbay v. Harbhay*, I. L. R., 5 Bom., 575, that the purchase was not void *ab initio*, but only voidable "on the application of the judgment-debtor or other person interested in the sale." CHINTAMANRAY v. VITHABAI. [I. L. R., 11 Bom., 588

496.

Civil Procedure Code (Act X of 1877), s. 294, amended by Act XII of 1879—Purchase at a Court-sale on behalf of a judgment creditor without permission of the Court.—Under the Civil Procedure Code of 1877, as amended by Act XII of 1879, a purchase made at a Court-sale on behalf of a judgment creditor was not invalid for want of permission of the Court. That

from bidding—Now disclosure amounting to fraud. An executor had obtained a decree on the footing of a judgment-debtor to sale. At the time of sale the decree holder, who had obtained leave to bid, entered into an agreement with P to the effect that, if P would dissuade other persons from bidding, he (the decree-holder) would purchase the whole property for Rs3,000 and convey it on certain terms to P.

1891 for Rs3,000, which was a little more than half the actual value. The sale was confirmed on the 29th June 1891, and the judgment debtor, who at the time of the sale was a minor under the Court of Wards, obtained his majority on the 21st April 1894, and filed this petition praying to set aside the sale on the 15th May 1894. Held that the omission on the

that therefore the sale must be set aside. JATYI-LAKSHMI BAVUTTA v. VITA HANUMANA AYYAPPA. I L R, 19 Mad, 316

Held on appeal to the Privy Council—A decree-holder who has obtained leave to bid at a judicial sale in regard to restrictions upon him, in the same position as any other purchaser. A charge against a bidder that he and those who have acted in concert

856, though a correct decision on the case, was too

the discussion of bidder allowed sufficient ground for making the order. But the High Court had decided in favour of the petitioner, another point—that there had been material irregularity, within that

found upon the Court executing the decree, and entitled the petitioner to have the sale set aside on the ground that in point of law to leave to bid had

from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside. Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree—Held that the decree holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family

I L R, 7 Cal, 346; 9 C L R, 263

601. P uchasas by

decree-holder—Material irregularity—Liberty to bid—Conduct calculated to deter bidders—Civil Procedure Code (Act X of 1877), ss. 294, 311—

The holder of a decree, in execution of which property is sold, is absolutely bound, under a 294 of Act X of 1877, to have express permission from the Court before he can purchase the property, and whether this objection is taken and pressed or otherwise, a sale to him is invalid unless he has got explicit permission. The use of a sale of language by an intending bidder in disparagement of the property for the purpose of inducing by ricklers, and deterring them from bidding for the property, is a "material irregularity" sufficient to render the sale invalid under a 311 of the same Act. HANUMAN BATTAN v. HANUMANT SINGH. I L R, 5 Cal, 308

602. Disparaging

remarks by bidders or purchasers other than the decree-holder—Notice of sale—Practice regarding sales in execution of decrees—Adjudgment of sale—Civil Procedure Code (Act XIV of 1882),

I L R, 7 Cal, 346; 9 C L R, 263, and

HANUMAN BATTAN v. HANUMANT SINGH, I L R, 5 Cal, 308, distinguished. It is the practice of the Courts under the Rules of the High Court, which have the force of law, to place all properties intended for sale in execution of decrees on a list, and to proceed with the sales from day to day, commencing on an appointed day. As each property is taken up in its turn, an adjournment of the sale of a particular property, which is the consequence of such procedure, is not an adjournment within the meaning of a 291 of the Civil Procedure Code, and it cannot be said in such a case that there was an irregularity in the sale not having been held on the appointed day. LAT MONTY CHOWHAN v. KISHU MONTY THAKUR. I L R, 17 Cal, 163

603. Civil Procedure Code (1882), s. 311—Position of decree-holder who has obtained leave to bid—Disparaging persons

SALE IN EXECUTION OF DECREE

—continued.

17. SETTING ASIDE SALE.—*continued.*
receipts for amount due to him.—Where the decree-holder is himself the purchaser at a sale in execution, there is no reason why he should not, instead of paying the price in cash, give receipts for the amount due to him under his decrees, supposing their value is sufficient to cover the amount for which the property is sold. The fact that he does so is not a valid objection to the sale. *KHILAT CHUNDER GHOSH v. KANHU CHUNDER PATI CHOWDHRY* [16 W. R., 48]

508. *Payment of purchase-money—Civil Procedure Code, 1859, ss. 254, 256, 257—Default in making deposit.*—Directions as to the payment of the purchase-money at sales in execution of decrees, arising under s. 254, Act VIII of 1859, were to be dealt with as provided by that section, and did not fall under ss. 256 and 257. A default under s. 254 was not an "irregularity in conducting the sale" under s. 256. *BRINDA DEBBE Dossar v. GOPEE SOONDHAR Dossia* [6 W. R., 82]

509. *Payment of purchase-money—Civil Procedure Code, 1877, s. 294, and ss. 306, 313—Set-off of purchase-money—Omission to make deposit.*—The requirements of s. 306 of the Civil Procedure Code applying to all cases of sale of immoveable property, under Ch. XIX, a decree-holder buying with permission given under s. 294, and desiring to set off his purchase-money against the amount of the decree, is not exempt from the necessity of making, at the time of sale, a deposit of 25 per cent. on the amount of such purchase-money; and such deposit must be made in cash. The option so to set off the purchase-money cannot be exercised by the purchaser until the completion and payment of expenses of the sale. Where, however, all parties interested in the amount to be deposited have waived their right to have that amount deposited in cash, the sale ought not to be set aside on the ground that a cash deposit has not been made. *GOPEL SINGH v. ROY BUNWARRIE LATE SAHOO* [5 C. L. R., 181]

510. *Payment of purchase-money—Civil Procedure Code, 1877, s. 306—Failure to pay deposit of purchase-money required by that section.*—The person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by s. 306 of the Civil Procedure Code, pay a deposit of 25 per cent. on the amount of his purchase immediately after such declaration, but on a date subsequent to the date on which the property was put up for sale. *Held* that there was no sale at all of the property. *INTARAT ATIKHAN v. NARAIN SINGH I. L. R., 5 All., 316*

511. *Failure by purchaser to make the deposit required by s. 306 of the Civil Procedure Code—Material irregularity in conducting sale—Civil Procedure Code (Act XII of 1882), ss. 244, 306, 308, 311, and 312.*—Failure on the part of the person declared to be the purchaser at a sale in execution of a decree to make, and on the

17. SETTING ASIDE SALE.—*continued.*

been granted. *Held* by the Judicial Committee that this ground had not been established by evidence on an issue between the parties having been taken for the first time in the Court of appeal, with a change of the matter in controversy; and that the fraud on which alone the High Court's order could be sustained had neither been alleged nor proved. *MAHOMED MINA KAVUTHAR v. SAVTAS RAGHUNADHA GOUDAR* [I. L. R., 23 Mad., 227]
 [I. R., 27 I. A., 17]
 4 C. W. N., 227

504. *Purchase by son of decree-holder—Code of Civil Procedure (Act I of 1877), s. 294.*—A purchase by the son of a decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of s. 294 of Act X of 1877 as it stood previously to its amendment by Act XII of 1879, and is absolutely void if the purchase were made with funds which were joint property of the father and son. *NARAYAN DESHPANDE v. ANANT DESHPANDE* [I. L. R., 5 Bom., 130]

505. *Rejection of highest bid—Abortive sale caused by act of judgment-debtor—Highest bidder declared not the purchaser—Validity of sale.*—Three attempts to sell land taken in execution under a decree had been rendered abortive by the acts of the judgment-debtor, and a delay of seven years occasioned, during which by his conduct he defeated the execution of the decree. When the property was put up for sale for the fourth time, the Collector rejected the two highest bids, on the ground that neither of the bidders could produce a mortgage-mah from the persons for whom respectively they proposed to act as agents, nor produce the required deposit, and he declared the third highest bidder the purchaser of the land. *Held* that under the circumstances the conduct of the Collector was justifiable and the sale valid. *MOHAR NARAIN SINGH v. KRISHNANAND MISHRA* [2 Ind. Jur., O. S., 1: 5 W. R., P. C., 7]
 9 Moore's I. A., 324

506. *Deposit by purchaser by decree-holder.*—At a sale in execution of a decree, when the sale of any lot is completed, the purchaser should then and there be required to make the deposit prescribed by the Civil Procedure Code, failing which the lot should at once be put up to sale at the risk of the first purchaser. The decree-holder, if the lot is knocked down to him, is as much bound to make the prescribed deposit as any other auction-purchaser. *CHITKOO DUTT Jha v. LEEBANDU SINGH* [W. R., 1864, Mis., 30]

507. *Purchase by decree-holder—Payment not in cash, but by giving*

17. SETTING ASIDE SALE—continued.

which was circulated to mislead bidders, and to prevent them from offering adequate prices, or from bidding at all, and the sale having resulted in a price altogether inadequate.—*Held* that such misstatement was a material irregularity in publishing or conducting the sale, although there might be no rule requiring publication of the value in that proclamation; and that the special remedy provided in s. 311 was applicable, as substantial injury had resulted. SAA-
T. I. R., 20 AU., 412
T. I. R., 25 I. A., 148
2 C. W. N., 550

On a sale of property in execution of a decree, the value stated in the sale proclamation is a material fact within sub-s. (e) of s. 287 of the Code of Civil Procedure. Under-valuation of such property is a material irregularity in publishing or conducting the sale. SIVA-
T. I. R., 23 Mad., 568
T. I. R., 23 Mad., 568

521.—*Material irregularity*—Confirmation of sale—*Code of Civil Procedure (Act XIV of 1882)*, ss. 305, 311, and 314.—The sale of immovable property to the highest bidder for a price which subsequently appears to be too low is not a material irregularity in publishing or conducting the sale. A decree-holder or judgment-debtor cannot apply to set aside a sale on the ground of the price realized being too low. Under s. 314 of the Code of Civil Procedure, 1882, the Court cannot, upon or without application, refuse to confirm a sale on the ground that the price bid is too low. LAKSHMI v. KRISHNAMAHAR

522.—The circumstance that property was sold in execution of a decree below its proper value, and that few persons attended the sale, is not sufficient to vitiate the sale. RUGHOO NATH SINGH v. TOODKX 5 N. W., 19

523.—*Error in notification*—*Civil Procedure Code, Inadequacy of price*.—A sale held on the 9th September 1872, in execution of a decree, the respondent purchased an estate for Rs5,000. The notification of sale had stated the Government revenue to be Rs3,146 instead of Rs8,146, the sale being fixed for the 5th August 1872. The sale was postponed with-
out by the judgment-debtor praying for such postponement, "the attachment and the notification of sale being maintained." On the 1st October 1872 the judgment-debtor objected under s. 256 of Act VIII of 1859 to the sale on the ground of material error in the above-mentioned notification. The Subordinate Judge overruled such objection, but omitted to pass an order under s. 257, confirming the sale. Thereupon the judgment-debtor paid into Court the amount of the decree, and then obtained from the Judge an order

524.—*Error in notice of sale*.—Mere inadequacy of price is not a sufficient ground for setting aside a sale in execution if no substantial injury has been caused to judgment-debtor by any material irregularity in publishing and conducting the sale; and the mention of the name of a wrong person in the notice of sale is not such an irregularity, when the notice has been served in the right month and the estate has been identified. NOORAH HOSSEIN v. RAZ COOMAR SAHNE

525.—*Irregularity in publishing or conducting sale, price*.—If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was given cause of the inadequacy of price, until proof is given to the contrary. GOPESNATH DOBEY v. ROY LUCHMEEPUT SINGH, T. I. R., 3 Cal., 542, approved.

526.—*Irregularity*—*Code of Civil Procedure (1882)*, ss. 291 and 311.—Sale at inadequate price owing to hour of sale not being fixed.—Where a debtor's property under attachment had been ordered to be sold at a fixed date, after the disposal of a certain claim thereto made under s. 278 of the Code of Civil Procedure, but no hour had been fixed for the sale, the Court held, affirming the decision of the Subordinate Judge, that there had been material irregularity causing substantial injury to the debtor; and that it

527.—*Irregularity*—*Code of Civil Procedure (1882)*, ss. 291 and 311.—Sale at inadequate price owing to hour of sale not being fixed.—Where a debtor's property under attachment had been ordered to be sold at a fixed date, after the disposal of a certain claim thereto made under s. 278 of the Code of Civil Procedure, but no hour had been fixed for the sale, the Court held, affirming the decision of the Subordinate Judge, that there had been material irregularity causing substantial injury to the debtor; and that it

528.—*Error in notification*—*Civil Procedure Code, Inadequacy of price*.—A sale held on the 9th September 1872, in execution of a decree, the respondent purchased an estate for Rs5,000. The notification of sale had stated the Government revenue to be Rs3,146 instead of Rs8,146, the sale being fixed for the 5th August 1872. The sale was postponed with-
out by the judgment-debtor praying for such postponement, "the attachment and the notification of sale being maintained." On the 1st October 1872 the judgment-debtor objected under s. 256 of Act VIII of 1859 to the sale on the ground of material error in the above-mentioned notification. The Subordinate Judge overruled such objection, but omitted to pass an order under s. 257, confirming the sale. Thereupon the judgment-debtor paid into Court the amount of the decree, and then obtained from the Judge an order

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530.—*On a sale of property in execution of a decree, the value stated in the sale proclamation is a material fact within sub-s. (e) of s. 287 of the Code of Civil Procedure. Under-valuation of such property is a material irregularity in publishing or conducting the sale. SIVA-*

531.—*Material irregularity*—Confirmation of sale—*Code of Civil Procedure (Act XIV of 1882)*, ss. 305, 311, and 314.—The sale of immovable property to the highest bidder for a price which subsequently appears to be too low is not a material irregularity in publishing or conducting the sale. A decree-holder or judgment-debtor cannot apply to set aside a sale on the ground of the price realized being too low. Under s. 314 of the Code of Civil Procedure, 1882, the Court cannot, upon or without application, refuse to confirm a sale on the ground that the price bid is too low. LAKSHMI v. KRISHNAMAHAR

532.—The circumstance that property was sold in execution of a decree below its proper value, and that few persons attended the sale, is not sufficient to vitiate the sale. RUGHOO NATH SINGH v. TOODKX 5 N. W., 19

533.—*Error in notification*—*Civil Procedure Code, Inadequacy of price*.—A sale held on the 9th September 1872, in execution of a decree, the respondent purchased an estate for Rs5,000. The notification of sale had stated the Government revenue to be Rs3,146 instead of Rs8,146, the sale being fixed for the 5th August 1872. The sale was postponed with-
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534.—*Error in notice of sale*.—Mere inadequacy of price is not a sufficient ground for setting aside a sale in execution if no substantial injury has been caused to judgment-debtor by any material irregularity in publishing and conducting the sale; and the mention of the name of a wrong person in the notice of sale is not such an irregularity, when the notice has been served in the right month and the estate has been identified. NOORAH HOSSEIN v. RAZ COOMAR SAHNE

535.—*Irregularity in publishing or conducting sale, price*.—If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was given cause of the inadequacy of price, until proof is given to the contrary. GOPESNATH DOBEY v. ROY LUCHMEEPUT SINGH, T. I. R., 3 Cal., 542, approved.

536.—*Irregularity*—*Code of Civil Procedure (1882)*, ss. 291 and 311.—Sale at inadequate price owing to hour of sale not being fixed.—Where a debtor's property under attachment had been ordered to be sold at a fixed date, after the disposal of a certain claim thereto made under s. 278 of the Code of Civil Procedure, but no hour had been fixed for the sale, the Court held, affirming the decision of the Subordinate Judge, that there had been material irregularity causing substantial injury to the debtor; and that it

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out by the judgment-debtor praying for such postponement, "the attachment and the notification of sale being maintained." On the 1st October 1872 the judgment-debtor objected under s. 256 of Act VIII of 1859 to the sale on the ground of material error in the above-mentioned notification. The Subordinate Judge overruled such objection, but omitted to pass an order under s. 257, confirming the sale. Thereupon the judgment-debtor paid into Court the amount of the decree, and then obtained from the Judge an order

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540.—*On a sale of property in execution of a decree, the value stated in the sale proclamation is a material fact within sub-s. (e) of s. 287 of the Code of Civil Procedure. Under-valuation of such property is a material irregularity in publishing or conducting the sale. SIVA-*

SALE IN EXECUTION OF DECREE

17. SETTING ASIDE SALE—continued.

direct evidence or be inferred, where such inference is reasonable, from the nature of the irregularity

which must, in the ordinary course of things, lower the value of the property.—*Held* that it might fairly be inferred that the irregularity in the conduct of the sale was the cause of the inadequacy of the price. *Maccaig v. Mahabir Prasad Singh, I. L. R., 9 Cal., 656*, and *Tala Mohan Lal v. Secretary of State for India, I. L. R., 11 Cal., 200*, referred to. *Gur Datta Lal v. Jawahar Singh, I. L. R., 20 Cal., 699*

(c) SUBSTANTIAL INJURY

632. *Substantial injury—Civil Procedure Code, 1859. Proof of substantial injury—Civil Procedure Code, 1859.*—Blen where material irregularity had occurred, as from non issue of proclamation of sale, the party applying to set aside the sale on that ground was bound, under s. 260, Act VIII of 1859, to prove that he had sustained substantial injury thereby. *Joy Lala Doss v. Mahomed Hossain, I. L. R., 2 W. R., 114*

Mahomed Syah v. Hak Churn Dutt, I. L. R., 2 W. R., 114

Abdul Mahomed v. Sita Doodaiah Iyengar, I. L. R., 11 W. R., 148

Lake Ram v. Mohan Doss, I. L. R., 11 W. R., 148

Nizamuddin Ali Khan v. Abdul Aziz, I. L. R., 11 W. R., 148

Chander Sekun Dutt v. Jadoo Chunder Sanyal, I. L. R., 11 W. R., 148

Sawar Singh v. Mahomed Fakir, I. L. R., 11 W. R., 148

Shro Prasad Misra v. Hrudai Narayan, I. L. R., 11 W. R., 148

This no v. forms an express enactment in the Code

633. *Irregularity and injury—Civil Procedure Code (Act XIX of 1859), s. 311*—Where an application is made to set aside a sale in execution of a decree

SALE IN EXECUTION OF DECREE

17. SETTING ASIDE SALE—continued.

is sufficient under s. 311 of the Code, if the evidence, though not "direct evidence," shows that the injury was a necessary result of the irregularity complained of. *Tasadduk Rasul Khan v. Ahmed Hussain, I. L. R., 21 Cal., 66*

Sunno Mohar Dutt v. Dattina Kanyan Dattal, I. L. R., 24 Cal., 281

627. *Civil Procedure Code (1859), ss. 291 and 311—Material irregularity—Substantial loss—Inadequacy of price*

Where a material irregularity is proved to have occurred in the conduct of a Court sale, and it is shown that the price realized is much below the true value, it may ordinarily be inferred that the low price was a consequence of the irregularity, even though the manner in which the irregularity produced the low price be not distinctly made out

of that section must be followed with exactitude. When a sale is adjourned under s. 291, the provisions of that section must be followed with exactitude. *When a sale is adjourned under s. 291, the provisions of that section must be followed with exactitude.*

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SALE IN EXECUTION OF DECREE

17. SETTING ASIDE SALE—continued.

of substantial injury thereby to the judgment-debtor. As to this, the latter section requires affirmative evidence. *Tasadduk Rasul Khan v. Ahmad Husain*. I. L. R., 21 Cal., 66 [T. L. R., 20 I. A., 176]

537. *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Proof of substantial injury.*—It is not sufficient for an applicant under s. 311 of the Code of Civil Procedure to show that there has been material irregularity in publishing or conducting a sale, and that a price below the market value has been realized; but he must go on to connect the one with the other, that is, the loss with the irregularity as effect and cause, by means of direct evidence. *Tasadduk Rasul Khan v. Ahmad Husain*, I. L. R., 21 Cal., 66, referred to. *Jagan Nath v. Makrur Prasad* [I. L. R., 18 Ali., 37]

538. *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Proof of substantial injury.*—*Held* that in an application under s. 311 of the Code of Civil Procedure to set aside a sale in execution of a decree, it is necessary for the applicant to show not only that there has been a material irregularity in publishing or conducting the sale, but also that of such material irregularity. *Arumachellam v. Arumachellam*, I. L. R., 12 Mad., 19, and *Tasadduk Rasul Khan v. Ahmad Husain*, I. L. R., 21 Cal., 66, referred to. *Shirin Begum v. Agha Ali Khan*. See also *Subramanyam Debi v. Dakina Rangan Sanyal*. I. L. R., 24 Cal., 291 and *Venkata Sabharaya Chetty v. Zakindar* of Karoelinnagar. I. L. R., 20 Mad., 159

539. *Liability for expenses of sale—Sale set aside for irregularity.*—Where an execution-sale was set aside, on the ground of irregularity on the part of the Ameen and other officials, *Held* that the judgment-debtor was not chargeable with the expenses of such sale. *Hussain v. Luchman Dass*. 18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS. (a) COMPENSATION.

540. *Right to compensation for improvements on ejectment—Act XI of 1855.*—A purchaser at a Sheriff's sale was not entitled to compensation under Act XI of 1855, s. 2, for improvements to the land during his occupation if he had relied solely on the bill of sale. *Khetri v. Doyalchund Lal* [Bourke, O. C., 159]

17. SETTING ASIDE SALE—continued.

534. *Presumptio in summoning.*—On an application under s. 311 of the Civil Procedure Code (Act X of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale; but no witnesses were called to prove that substantial injury had been caused thereby. It also appeared that seventeen days after the applicant had applied for the requisite fees; and that subsequently there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in consequence of such delay, he had not been allowed a fair opportunity to produce his witnesses, *Held* that the Court cannot presume that substantial injury has been caused from the mere fact of there having been a material irregularity in publishing a sale; but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity. *Held* also that the applicant, having been guilty of laches himself, could not be allowed to set up the delay in the office as a ground for the non-production of his witnesses. *Gope Nath Dobay v. Roy Luchmeeput Singh*, I. L. R., 3 Cal., 642, considered. *Bonomat Mozumdar v. Woomesh Chunder Bunderpadhyay*. [I. L. R., 7 Cal., 730 : 9 C. L. R., 341]

535. *Civil Procedure Code, s. 311—Alleged irregularity attending sale in execution—Failure to prove substantial injury resulting.*—A judgment-debtor having allowed the execution-sale of immovables to be completed without objecting on the ground afterwards alleged by him, viz., insufficiency of description within the requirements of s. 287, he having been throughout aware of what the description was, the sale is not invalid on this ground alone without more. No evidence having been given in the Court executing the decree of substantial injury having resulted by reason of such irregularity, i.e., the alleged misdescription, *Held* that, although the Appellate Court below had assumed that the property had been sold for less than it ought to have fetched, such substantial injury as inadequacy of price should have been proved to have occurred in order to bring the case within s. 311. *Macnaghten v. Alahab Peshad Singh*, I. L. R., 9 Cal., 656, referred to and followed. *Arumachellam v. Arumachellam*. I. L. R., 12 Mad., 19

536. *Civil Procedure Code (1882), ss. 290 and 311—Material irregularity—Proof of substantial injury.*—The non-compliance with the requirement of s. 290 of the Civil Procedure Code that before sales of immovables in execution of decree thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of s. 311. But its effect is not to make the sale a nullity without proof

SALE IN EXECUTION OF DECREE

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—continued.

and he is not limited to the special procedure in the execution department mentioned in s. 315 MUKKA

554. *Purchaser de-
Kiron & Gajadhar Singh I. L. R., 5 All., 577*

555. *Collusion with*

**Confra, Hira Lal & Kanyukhmisra
I. L. R., 2 All., 289**

calation, except as to a sum of Rs. 500, which represented the alleged value of the judgment debtor's interest in the land brought to sale by the decree-holder. Held that, as the judgment debtor was found to have no interest in the land, the purchaser was entitled to a refund of the money paid to the decree holder
**Kanyukhmisra & Kanyukhmisra
I. L. R., 5 Mad., 101**

556. *Civil Procedure Code, 1877, s. 315—Suit to recover purchase money
where debtor is found to have no interest—A purchaser at an auction sale of property found indebted to belong to a third party, as entitled to recover back his purchase money under s. 315 of the Civil Procedure Code, on the ground that the judgment debtor had no saleable interest in the property sold. Decree reversed. **19 C. L. R., 331***

557. *Suit to recover purchase money—Civil Procedure Code, s. 315,
Dut to recover*

558. *Suit to recover purchase money—Civil Procedure Code, s. 315,
Dut to recover*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—continued.

judgment creditor *P* then sued the judgment-

558. *Civil Procedure
I. L. R., 11 Mad., 269*

I. L. R., 13 All., 383

Suit by the

of the defendant, but was subsequently criticised by the son of the judgment debtor. He then sued in 1889 to recover the purchase money paid by him, on

by the plaintiff possessed to legal interest therein. **19 C. L. R., 331**

559. *Decree of
Narayana & Narayana I. L. R., 18 Mad., 361*

560. *Decree of
Narayana & Narayana I. L. R., 18 Mad., 361*

SALE IN EXECUTION OF DECREE

—continued.

18. SETTING ASIDE SALE—RIGHTS OF

PURCHASERS—continued.

recover back his purchase-money when he finds that the judgment-debtor has no saleable interest at all. The implied warranty of title in respect of sales by private contract cannot be extended to Court-sales except so far as such extension is justified by the procedural law in India, viz., by s. 315 of the Civil Procedure Code. *Borah Ally Khan v. Abdul Aziz*, L. R., 5 I. A., 116, followed. *SUNDARA GOPALAN v. VENKAT VARADA AYYANGAR*

[I. L. R., 17 Mad., 228

561. Return of pur-

chase-money when judgment-debtor found to have no saleable interest in property sold—Procedure for finding the fact of his having no interest—Notice to judgment-creditor—Parties—Civil Procedure Code, ss. 313, 315, and 622—Superintendent of High Court.—One V obtained a decree against A, and in execution sold certain land which was purchased by B, who got a certificate of sale, and obtained possession. Subsequently the land was claimed by one B, who sued A, the judgment-debtor, and B, the auction-purchaser, to set aside the sale and establish his title to the land. He succeeded in his suit, and in execution got possession of the land. Thereupon B (the auction-purchaser) applied, under s. 315 of the Civil Procedure Code (XIV of 1882), for a refund of his purchase money, and the Subordinate Judge made an order directing V, the decree-holder, to repay it. V contended that he ought not to have been ordered to refund the money without having an opportunity of proving that the property had been properly sold in execution of his decree against A, and that, as he had not been made a party to B's suit, he had had no opportunity of doing this. On application to the High Court,—Held that the order of the Subordinate Judge for the restitution of the purchase-money was wrong. S. 315 provides that the purchase-money paid at an execution-sale is to be returned when it is found that the judgment-debtor has no saleable interest in the property sold. It does not prescribe how the fact is to be ascertained, but the conclusion from s. 313 as well as from general principles is that it must be a finding on some proceedings to which the judgment-creditor was a party, or at any rate of which he had notice. In the present case there was no finding on which the Subordinate Judge could base his order for the restitution of the purchase-money. *VITHOBA v. BASAR*

562. Sale set aside

—Said by auction-purchaser to recover purchase-money—Civil Procedure Codes (Act VII of 1859), ss. 256, 257, 258; (X of 1877), ss. 312, 315—Warranty—Caveat emptor.—Certain immovable property was attached and proclaimed for sale in the execution of a decree on the application of the decree-holder, H, as the property of his judgment-debtor. W objected to the attachment and sale of such property on the ground that it did not belong to the judgment-debtor, but was endowed property. His objections were disallowed, and the property was

[I. L. R., 2 All., 780

563. Sale by Sheriff

under writ of *habeas corpus*—Sale subsequently declared invalid—Suit to recover purchase-money—Liability of execution-creditor—Civil Procedure Code, 1859, ss. 201, 242.—The plaintiff in a suit by A against B stated that, in a suit in which B had recovered judgment against C, a writ of *habeas corpus* was issued on 18th June 1866, issued on the application of B, directing the Sheriff of Calcutta to levy the judgment-debt by seizure, and, if necessary, by sale, of the property of C in Bengal, Behar, and Orissa, or in any other districts which were then annexed or made subject to the Presidency of Fort William in Bengal; that the writ did not authorize the execution thereof against immovable property in Oudh; that under the writ the Sheriff, acting under instructions from B, seized and put up for sale the right, title, and interest of C in a taluk in Oudh, which was purchased by D, to whom the Sheriff executed a bill of sale, and on receipt of the purchase-money paid a portion thereof to B and the balance to C, and put D into possession of the property, and the remained for some time in possession and in receipt of the rents and profits; that eventually in proceedings in Oudh instituted by D for partition of the property purchased by D, the sale was pronounced to be null and void and was set aside, and D was removed from

18. SETTING ASIDE SALE—RIGHTS OF

—continued.

PURCHASERS—continued.

put up for sale on the 20th July 1875 under the provisions of Act VII of 1859, and was purchased by K. W subsequently sued K to establish his claim to the property and to have the sale set aside, and on the 18th August 1876 obtained a decree setting it aside. Thereupon K sued H to recover the purchase-money, alleging a failure of consideration. Held that the sale not having been set aside in favour of the judgment-debtor on the ground of jurisdiction or other illegality or irregularity affecting the sale, but having been set aside in favour of a third party who had established his title to the property, and there being no question of fraud or misrepresentation on the part of the decree-holder, the suit was not maintainable. *Rajib Lohun v. Bimalmoni Das*, 2 B. L. R., 4 C., 82; and *Soudamini Chowdhurani v. Krishna Kishor Poddar*, 4 B. L. R., 11, 12, followed. *Makundi Lal v. Kanusila*, I. L. R., 1 All., 565; *Neelkumth Sahoe v. Asmun Matho*, 3 N. W., 67; and *Doolah Hur Nath Koonwer v. Baijoo Ojha*, 2 Agra, 50, distinguished. Held also that the auction-purchaser could not have applied under s. 315 of Act X of 1877 for the return of the purchase-money, as the provisions of that section could not have retrospective effect, and would not apply to a sale which had taken place before that Act came into operation. In the matter of the petition of *Mulo*, I. L. R., 2 All., 299, dissented from. *Per STRAIGHT, J.*—That, had the provisions of that section been applicable, instead of instituting a suit, the auction-purchaser should have applied for the return of her purchase-money in the execution of the decree. *HIRA LAL v. KARIM-UN-NISA*

SALE IN EXECUTION OF DECREE

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—concluded.

*aside for irregularity—Right to recover money expended for benefit of indigo factory.—*When a sale is set aside under Act VIII of 1859, s. 256, where the purchaser had, before the sale was confirmed, taken possession, laid out money, and received rents or profits, and he is turned out some time after by reason of such reversal of sale, he should get back the money laid out by him for the benefit of the estate in addition to his purchase-money and interest thereon, and should account to the judgment-debtor for the profits received by him. At the same time it would depend upon the circumstances under which the purchaser took possession, and the nature of his outlay, whether he ought in equity to be allowed to claim reimbursement of the money expended by him. Where a purchaser *bond fide* took possession of the property, and from time to time laid out money thereon, because he thought that otherwise from its peculiar nature it would become even worse than valueless (e.g., making advances in an indigo concern), least the opportunity of the season should pass away), it was held that he was entitled to have it made a condition of setting aside the sale that he be repaid so much of the outlay as he could show was beneficial to the estate; he accounting for the rents and profits realized by him. *Morgan v. Ardoo Hite* [23 W. R., 393

Continuing order setting aside sale. *Ardoo Hite v. Macrae* 23 W. R., 1

569. *Suit by purchaser for interest on purchase-money—Act VIII of 1859—Act X of 1877, s. 315.—*A judgment-debtor, whose property had been sold in execution of a decree under Act VIII of 1859, appealed from the order disallowing his application to set aside the sale, after Act X of 1877 (Civil Procedure Code) came into force. The Appellate Court set aside the sale. The purchaser sued the decree-holder for interest on the purchase-money and the expenses of the sale. The purchase-money having been returned to him, under the order of the Court executing the decree, without interest and less such expenses, *Held* by the Full Bench that the provisions of Act X of 1877, and not of Act VIII of 1859, were applicable to the determination of the matter in dispute in the suit. *Held* by the Divisional Bench (Strait Settlements) that, with reference to the ruling of the Full Bench, the suit was maintainable. *Held* also by the Divisional Bench that, under the circumstances of the case, the plaintiff ought not to be granted the relief sought. *Raghunath Daxat v. Bank of Upper India*. I. L. R., 5 All., 364

SALE OF GOODS.

See CASES UNDER CONTRACT.

See CONTRACT ACT, s. 73. [15 B. L. R., 276

See CONTRACT ACT, s. 78. [I. L. R., 4 Cal., 801 I. L. R., 15 Cal., 1

SALE IN EXECUTION OF DECREE

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—continued.

Reversing the judgment of the High Court in *Bissessur Lall Sahoo v. Ram Thun Singh* [11 B. L. R., 121 : 19 W. R., 351

566. *Suit to recover purchase-money when sale is set aside—Minor Costs—Fraud.—*A decree-holder fraudulently caused the sale in execution of his decree of certain immoveable property belonging to a minor. The minor brought a suit for a declaration that such sale was invalid and obtained possession of the property from the auction-purchaser. The auction-purchaser sued the decree-holder to recover his purchase-money and the costs incurred by him in defending the suit brought by the minor. *Held per Pearson, Turner, Spackman, and O'Donnell, JJ.*, it being found that the auction-purchaser was not a party to, or cognizant of, the fraud on the part of the decree-holder, that neither the mere fact that the auction-purchaser knew that he was purchasing the property of a minor, nor the mere fact that he did not ascertain whether or not the sale was justified by the terms of the decree, disentitled him to recover the purchase-money from the decree-holder. *Held* also that he could not recover the costs incurred by him in defending the suit brought by the minor, being a suit he ought not to have defended. *Per Stewart, C.J.—*That the auction-purchaser, being guilty of fraud, was not entitled to recover the purchase-money, and, assuming that he was innocent of fraud, that, having purchased with the knowledge that the property was the property of a minor and without ascertaining that the sale was justified by the terms of the decree, he could not recover the purchase-money. *MAKUNDI LALL v. KANWISA* I. L. R., 1 All., 568

567. *Decree passed without jurisdiction—Suit to recover possession of lands sold in execution.—*The plaintiff sued to establish his right to, and to recover certain lands in, the possession of which he had been obstructed by the defendant. The plaintiff purchased the lands at a sale held in execution of a decree obtained against the first and second defendants in the Court of the District Munsif of Tripassore. The sale was directed by the District Munsif of Tripassore. Between the date of the decree and the sale, the village in which the lands were situated was transferred from the jurisdiction of the District Munsif of Tripassore to the District Munsif of Conjevaram. *Held* that the sale was a nullity and conferred no title upon the plaintiff, but that the plaintiff was entitled to recover from the first and second defendants the amount of the purchase-money paid by him. *NARAYANA SAWMY NAIR v. SARAYANA MUDALI* 6 Mad., 58

568. *Civil Procedure Code, 1859, ss. 256, 258—Right on sale being set*

SALE OF GOODS—continued.

payable three months after date. The bills of lading of the bales shipped in the *Abaka*, *Clan Drummond*, and *Hispatria* were endorsed in blank by *B. H. & Co.*, and sent by post to *B. A. & Co.* of Bombay. The plaintiffs received the 13 bales shipped by her, *B. A. & Co.* having endorsed the bill of lading to the plaintiffs. No specific payment was made by the plaintiffs in respect of these bales, but at that time they had a sum standing to their credit in the books of *B. A. & Co.* The invoices of 22 more bales, viz 13 bales ex *Clan Drummond* and 12 bales ex *Hispatria*, arrived in Bombay later in November, and were handed to the plaintiffs. On the 1st December 1890 the plaintiffs paid £25,000 to *B. A. & Co.* Neither *B. H. & Co.* nor the *Clan Drummond* had then arrived in Bombay. On the 4th December 1890 *B. H. & Co.* suspended payment, and on that day a first defendant *W.*, and on the next day *P.* was appointed special manager of the estate under a 13 of the English Bankruptcy Act (Stat 40 & 47 Vic, c 52). At that time the bills of lading for the remaining 62 bales were still with *B. H. & Co.*, who then handed them over to *P.* On the same 5th December 1890 *B. A. & Co.* suspended payment in Bombay. On the 18th December 1890 *D. & Co.* telegraphed to their agents in Bombay, *R. S. & Co.*, directing them to stop the goods in transit, including

the 13 bales on board that vessel. Previously to that notice, however, the bales had been landed in the dock at Bombay. They then gave the dock authorities notice, but at that time the ship's agents had already given the plaintiffs a delivery order for the goods. On the same day, viz, the 16th December, *R. S. & Co.* gave notice to the agents of the *Clan Drummond* to stop the 13 bales on board. These bales had not then been landed, and were then still on board. The other 62 bales, with the remaining 62 bales daily arrived in Bombay and went into dock.

Held, (1) on the evidence, that the payment of the £25,000 by the plaintiffs to *B. A. & Co.* in Bombay was a payment for and on account of the 100 bales. In respect of transactions before bankruptcy, a payment to *B. A. & Co.* was a payment to *B. H. & Co.*, but if that were not so, *B. H. & Co.* were agents to receive payment. (2) That on the goods being shipped at Liverpool, it was at an earlier date, the property in them passed from *D. & Co.* to *B. H. & Co.*

L. R., 18 Cal. 678

See Lien

L. R., 18 Cal. 678

See *Practical and Agent—Commission*

L. R., 17 Bom. 520

I. T. R., 20 Mad. 97

See *Shippers*

Agreement for—

See *Stare Act*, 1879, sec 1 art. 46

I. T. R., 14 Bom. 103

See *Stare Act* 1879 sec 11, art 2

I. T. R., 10 Mad. 27

I. T. R., 16 Mad. 150

—Note or memorandum of—

See *Stare Act*, 1879, sec. 1, art 46

I. T. R., 14 Bom. 103

—*Bom. Act*

—In August

of Bombay

ordered from *B. H. & Co.*, in London, 100 bales

of grey shirtings at 7s 10d per piece 70 b,

November-December shipment. In order to carry

out this order, *B. H. & Co.* purchased goods of the

plaintiffs or any of these shipments, and the

plaintiffs addressed by *D. & Co.* to *B. H. & Co.* for

winding draft contained the following clause "It

be remitted to be held by you specifically for the

protection of the enclosed bill, or any other of your

and there *B. H. & Co.* had then shipped in eight

different vessels, viz 13 bales in each of the four

steamers *Abaka*, *Clan Drummond*, *Inchale*, and

Hispatria, and 12 bales in each of the ships *Hispatria*

Hull.

B. H.

B. H. & Co. paid the freight at Liverpool and effected

insurance on the plantiffs' behalf. All the ship-

ments were made before the 1st December 1890,

except the 13 bales by the *Hispatria*, which were

shipped on that day. On the several shipments being

accepted, *B. H. & Co.* accepted bills of *D. & Co.*

SALE-PROCEEDS—concluded.
Sut for refund of—
W. R., F. B., 180
T. L. R., 12 All., 548
See Right of Suit—Sale in Execution

Suit to recover surplus—
[T. L. R., 18 Cal., 234
See Limitation Act, 1877, s. 10.

[T. L. R., 18 Cal., 234
See Limitation Act, 1877, art. 62.
[T. L. R., 18 Cal., 234
See Limitation Act, 1877, art. 120.
[T. L. R., 20 Cal., 51
See Limitation Act, 1877, art. 145.

[T. L. R., 16 Bom., 141
See Mortgage—Power of Sale.

Taking out of Court—
See Limitation Act, 1877, art. 179—Steps
in aid of Execution—Suits and other
Proceedings by Decree-holders.
[6 W. R., 182
15 W. R., 366
T. L. R., 6 All., 366
T. L. R., 10 Cal., 548
T. L. R., 17 Mad., 165
T. L. R., 22 Bom., 840

SALSETTE.

Law applicable in—Christian in
habitants of the Island of Salsette—Conversion to property
Hinduism to Christianity—Succession to property—Hindu law,
before Succession Act—Manager of family—Mortgage,
how far applicable—Manager of family—Sale in execution of
decree—Purchase, Rights of—Power of Christian
inhabitant of Salsette to make a will dealing with
his share in ancestral property.—The law of a
conquered territory continues in force until altered
by the Crown or the Legislature. The Island of
Salsette was conquered from the Marathas by the
British in 1774, and the law of succession for the Chris-
tian inhabitants of the Island remained unaltered
until the passing of the Indian Succession Act (X
of 1865). Until that Act was passed, the law of
primogeniture was not in force among the Christian
inhabitants of Salsette. The sons took the property of their
father in equal shares. *Quere*—Whether they did
so under the Hindu law or the Portuguese law, or
by force of usage existing among them. A mortgage
of certain property was made in 1875 by the eldest
inhabitant of the Island of Salsette. They had in-
herited the property from their father, who died in
1840. The family had originally been a Hindu fam-
ily, but had been converted to Christianity. *E* died
in 1876, and *M* died in 1883, bequeathing his interest
in the property to his nephew, the plaintiff, who was

Right of Government to—
T. L. R., 1 All., 596
See PAUPER SUIT—Suits.

Distribution of—
See CASES UNDER SALE IN EXECUTION
OR DECREE—DISTRIBUTION OF SALE-PRO-
CEEDS.

See SALE FOR AREARNS OF REVENUE—SALE-
PROCEEDS OF SALE.

See APPEAL—EXECUTION OF DECREE—
PARTIES TO SUITS.
[B. L. R., Sup. Vol., 13, 927
T. L. R., 13, 927

SALE OF GOODS—concluded.
of *C* Co., and from the latter, by reason of the plaintiffs'
contract with *B*, *R* & *F* Co., to the plaintiffs, the con-
structive possession of the goods and the legal right
to their actual possession, and to retain the same
against the representatives of *B*, *R* & *F* Co. and *B*, *F*
& *C* Co., in bankruptcy, to the bills of lading and the
goods represented by them without further payment.
(3) That the plaintiffs were entitled, as
agents of the representatives of *B*, *R* & *F* Co. and *B*, *F*
& *C* Co., as agents of the Official Receiver, had
not therefore the right to withhold the bills of
lading of any of these goods from the plaintiffs. (4)
On the evidence, that when *D* & *C* Co. forwarded the
goods to *B*, *R* & *F* Co. at Liverpool, they really started
the goods on their voyage to Bombay, and that "at home" in
Bombay. Until then the right of *D* & *C* Co. to stop
the goods in transit lapsed. (5) That effective-
notice on behalf of *D* & *C* Co. on the 15th December
given in respect of the 13 bales *ex Roumania* by
the agents of the *Roumania* not only as to specific
bales, but as to any other bales shipped on account
of *G* and *H* *D* Co. *B*, *F* & *C* Co., although indefinite,
covered in time to prevent the bales on board that
ship from reaching "home." (6) That effective-
notice by *R*, *S* & *C* Co. on behalf of *D* & *C* Co. to stop
at the date of the notice of the 2nd January 1891.
(7) As to the 12 bales *ex Hispania* landed prior to
the notice of the 15th December and the 9 (out of the
12) bales *ex City of Edinburgh* and the notice of the
2nd January 1891, and as to the 12 *ex Wistow*
Hall, in respect of which no notice at all was
given, that the plaintiffs were entitled to them.
(8) That the goods ceased to be in transit when
landed in dock in Bombay. T. L. R., 17 Bom., 62
NABUNAT v. WHERORD.

SALT, ACTS AND REGULATIONS RE-

LATING TO—continued.

2. MADRAS—concluded.

offence within the meaning of s. 18 of Madras Regulation I of 1805. *Hrg. v. PYLA ARCHI*

[I. L. R., 1 Mad., 278

13. Mad. Act I of 1882, s. 26—

Possession of salt-earth.—The possession of earth

impregnated with salt, not being a natural saline

effluence or deposit, is no offence under s. 26

of the Salt Laws Amendment Act, 1882. (*Madras*).

Queen v. THUMMI . . . I. L. R., 7 Mad., 163

14. . . . cl. 3; s. 27 (e)—

Salt imported from foreign State, Contraband.

S. 26 of the Salt Laws Amendment Act (Madras Act

I of 1882) makes it penal to import salt by any

route not legally sanctioned for that purpose, and also

to possess salt known to have been imported in

contravention of the salt laws; and s. 27 of the said

Act authorizes, *inter alia*, the Governor in Council

to make rules for regulating the import of salt by

land. No such rules having been passed in 1884, F

was convicted of being in possession of salt known

to have been manufactured in, and imported from,

the Native State of Pudukkottai. *Held* that the

conviction was right. *Queen-Burress v. PODIA-*

THAT . . . I. L. R., 8 Mad., 342

15. Acts XXVII of 1837 and

XXXI of 1850—*Maxim* "Omnia presumuntur

contra spoliatores"—Salt thrown overboard to

avoid measurement—Salt removed in excess of per-

mit—Applying the maxim "Omnia presumuntur

contra spoliatores," the High Court held that, where

a vessel was seized on suspicion of having a greater

quantity of salt on board than was allowed by its

permit, and immediately afterwards a number of men

boarded the boat, and with the assistance of the

agent of the owner threw a considerable quantity

of salt overboard, a presumption arose that there was

an excess of salt on board at the time of the seizure

beyond the amount allowed by the permit. Where

under a permit to pass a certain number of mounds

of salt on which duty has been paid, an amount in

excess of such number is removed, the whole of such

salt must be considered as removed contrary to the

provisions of the Salt Acts (Act XXVII of 1837 and

Act XXXI of 1850); and the whole of such salt, and

not merely the excess, is under these Acts liable to

confiscation. *FRANZI HORMASTI v. COMMISSIONERS*

OF CUSTOMS . . . 7 Bom., A. C., 89

16. Removal of salt—

Property in salt naturally formed—Theft—Dis-

honest removal of salt naturally formed in a creek,

which was under the supervision of an officer belong-

ing to the Customs Department, constitutes theft,

the salt having been legally appropriated by such

officer. (Per BARRY and WESS, JJ.) But removal

for one's own use from a creek, of such salt not

legally appropriated, constitutes no offence either

under the Penal Code or Act XXXI of 1850 or

XXVII of 1837, though under s. 7 of the latter Ac

SALT, ACTS AND REGULATIONS RE-

LATING TO—continued.

1. BENGAL—concluded.

of the woman. IN THE MATTER OF THE PETITION

OF BHABUT DEY . . . 18 W. R., Cr., 64

7. s. 17—*Infliction of penalty*

on owner and servant.—In a case of conviction,

under Act VII of 1864, of having in possession

of contraband salt, the penalty cannot be inflicted

on the owner of the salt and also on the servant or

gomastha of the owner who has the salt in his pos-

session, as the possession of the latter is the posses-

sion of the former. IN THE MATTER OF THE PETI-

TION OF GUNGADEW SAKHO . . . 22 W. R., Cr., 9

8. s. 18—*Confiscation of*

salt—Power of releasing from confiscation.—By

s. 18, Bengal Act VII of 1864, salt, not being con-

veyed by the route and to the place prescribed

in the law, becomes absolutely confiscated. The

power of releasing any such salt is vested in the

Board of Revenue under s. 39, and not in the

Magistrate. *Queen v. BORDOMATH*

[17 W. R., Cr., 48

9. Conviction of both prin-

cipal and agent.—The High Court in this case up-

held the conviction by the Magistrate, under Bengal

Act VII of 1864, s. 18, both of the owner of

contraband salt and of his agent who was trans-

porting the salt, and declined to direct the Magis-

trate to pass sentence on the managers of the boat in

which the salt was being transported when seized,

their boat having been already confiscated by the

Magistrate. *Queen v. MODUR MOHUN PAL CHOW-*

DHRY . . . 23 W. R., Cr., 7

10. Act XVII of 1840—*Posses-*

sion of salt-earth.—Being in possession of salt-

earth, from which salt may be manufactured, with

the object of making salt, is an offence under the

salt laws. ANONYMOUS . . . 4 Mad., Ap., 53

11. Mad. Reg. I of 1805, s. 18

—*"Spontaneous salt," Possession of—Salt license*

Act, 1871.—"Spontaneous salt" is salt which, pro-

duced naturally, requires no process of manufacture

to render it suitable for human consumption. To

collect spontaneous salt for domestic consumption,

or to be found in possession of it for that purpose,

or to be found in the act of conveying it home,

from the place in which it is collected, are not, *per*

se, acts prohibited by Regulation I of 1805, s. 18.

Samble—In districts to which the Salt license Act,

1871, is extended, to obtain or to be found in pos-

session of spontaneous salt under circumstances which

show an intention to evade payment of the excise

is an offence. ANONYMOUS

12. Salt-earth, Col-

lection of or possession of.—The collecting of salt-

earth from salt-swamps, or the being in possession of

salt-earth for the purpose of making salt, is not an

SALT, ACTS AND REGULATIONS RE-

LATING TO—continued

BOMBAY—continued.

Act XVIII came into force, they were not liable to pay any further duty, and that Act XVIII of 1877 did not apply to the said salt. The defendant contended that the additional duty was rightly levied on the salt, and further claimed to set off against the plaintiff's claims the sum of Rs 505 5-0 which the plaintiff would have been obliged to pay in importing the salt into British Malabar if they had not already paid it to the authorities in Bombay but from payment of which they had been exempted on production of the certificates above mentioned. Held that on the 28th December 1877 the plaintiff's had acquired the right to remove the salt, whenever they might think proper, by simply complying with the usual forms required by Act VII of 1873, and that Act XVIII of 1877 did not operate retrospectively so as to destroy that right and to impose on the plaintiff a heavier burden as a condition of their removing the salt. Held also however, that, as the salt was allowed to pass free into British Malabar on the strength of its having already paid the duty of Rs 2 0 per maund at Bombay the sum of Rs 505 5-0 must be deemed to have been appropriated by the plaintiff to the payment of the customs duty payable on the importation of the salt into the ports of

them at the Malabar ports, and claiming, in virtue of such certificates that the salt should be admitted

in the use of the plaintiff to the payment of the enhanced customs duties at such ports. Dato v Secretary of State for India [L. R., 8 Bom., 261]

SALT ACT.

Breach of—

See SEVEN—IMPRISONMENT—IMPRISONMENT IN DEVIATION OF FIVE. [L. R., 4 Mad., 336, note 5 Bom., Cr., 61]

SALT ACT (XII OF 1882)

II—Limitation prescribed for charging with offence—Found in concluding date of offence—The provisions of a 18 of the Limitation Act of 1877 do not apply to criminal cases, and the pecuniary terms of a 11 of the Indian Salt Act (XII of 1882) are not affected by that section. QUEEN-DWESS v. MADRASAPPA PAI [L. R., 20 Bom., 643]

SALT PANS, LEASE OF—

See STAMP ACT, sec 11, art 13. [L. R., 18 Bom., 640]

SALT, ACTS AND REGULATIONS RE-

LATING TO—continued

3 BOMBAY—continued.

made applicable by a 8 of the former, the salt removed becomes liable to distillation (Per LLOYD and KEMAL, JJ) REG v. MARAKKAR BHAYAKO [10 Bom., 74]

17. BOM. ACT VII. OF 1873—Act

XVIII of 1877—Duty paid former Act—Effect of new Act by which duty increased coming into operation before removal of salt—Increased duty paid under protest—Sent to recover excess—Set-off—Customs—Prior to manufacture in Bombay was Rs 13 0 per maund, and the Act which regulated the importation and transport of salt in the Presidency of Bombay was the Bombay Salt Act (VII of 1873). The plaintiff, who were salt merchants, were desirous of exporting salt to a the salt works at Uram and Panvel, and accordingly, under the provisions of Act VII of 1873, made four several applications in writing to the Assistant Collector of Salt Revenue for the

the duty payable in respect of the amount of applications were duly registered before the 28th December 1877. The salt comprised in the first three

last applications consisted of On the 28th came into force

manufactured in Bombay was raised from Rs 13 0 to Rs 8 0 per maund, and on that day the balance refused to allow the plaintiff to remove the balance of the first lot (viz., 2,748 maunds) or the last lot of eleven maunds per maund, was paid in respect thereof alleging that the same was leviable under Act XVIII of 1877. The plaintiff paid under Rs 9,096 5 0, and exported the salt to British Malabar,

The plaintiff subsequently brought this suit to recover the said sum of Rs 9,096 5 0, together with a sum of Rs 1,000 damages alleged to have been sustained by reason of the delay in removing the salt caused by the conduct of the Assistant Collector. The plaintiff contended that, having paid the duty in respect of the salt comprised in the four applications and the said duty having been received by the Collector before

SALTVALE

See CO-MANAGERS—GENERAL RIGHTS IN
JOINT PROPERTY.

[L. L. R., 14 AM., 273
Consolidation of claims for—

See PRACTICE—CIVIL CASES—ADMINISTRATIVE CASES—T. B. 22 CALG. 511

RAVLEY COURT I. L. R., 22 CALG., 511
[3 C. W. N., 67]

Lien for—

See Text

SEE CHAIRS OF OFFICE, COURT, AND JURY
JURISDICTION—SALVAGE 3 W. R., 253

1. Principles of salvage men--

Right to salvage.—A claim to salvage is founded on a principle of equity which the Courts of British India are bound to recognize. It accrues irrespective of the circumstances that the rescue is from a

danger incurred on inland waters, or of the circumstance of the engagement that the vessel was to be employed on the coast, the shore, or the sea. A port laden with ingo seed left

From the shore, it was seen that the pontoon bridge over the Gaugas at Campore, on the morning of the 6th of August. While the boatmen were

endeavouring to cross the stream, the boat struck the bridge at a point where the current was running with a velocity of 350 feet per minute. The boat

came athwart two of the pontoons, and by the pressure of the stream canted over on its side. From this cause, and also from the strain and other injuries, it has been allowed to

it began to take in water. That is, soon after the bridge must have broken from its moorings, or, more probably still, the boat and persons would have been submerged. The persons

They took measures to relieve the strain on the bridge by submerging the boat in charge of the bridge and once obtained all danger to the bridge by submerging the boat.

וְהָיָה כִּי יִשְׁמַע ה' אֶת הַקּוֹל וְהָיָה אֲנִי וְאַתָּה יוֹדְעִים
 וְהָיָה כִּי יִשְׁמַע ה' אֶת הַקּוֹל וְהָיָה אֲנִי וְאַתָּה יוֹדְעִים

to a place of safety, and the cargo was taken
and stored in a warehouse. *It is* that a right to
salvage accrued. Persons in these provinces, by
virtue of the law, have been secured, are entitled

has been paid or tendered to them in satisfaction of their claim. GILBERT & ROSS • 8 N. W., CHICAGO

Services outfitting vessel to
Paluago-Torres. - Where a ship is in a coastal

of action plan, and the process for and directed to the purpose of releasing the front

1. The first part of the document is a list of names and addresses, which appears to be a directory or a list of contacts. The names are written in a cursive script, and the addresses are listed below them.

[illegible][illegible]

SALVAGE—continued.

shaft and became disabled. While in that condition, the S.S. H.B. met her and towed her back to Bombay, the voyage occupying eleven days. The owners

of the S.S. C settled the claim of the owners of the S.S. H B for \$37,500, but refused to reimburse

any separate claim to remuneration by the primary; the master and crew of the S.S. *H. B. Hall* that the services rendered were, under all the circumstances of the case, salvage and not merely towage.

services, and that £10,000 was a fair remuneration for the master and crew of the salving vessel to be apportioned, £1,000 to the master, the rest to the crew, £100 to each of the crew of the vessel.

crew according to their ratings. The remaining crew entitled also to one thirty-second part of the ship, if any, which might be recovered by the ship, under her charter party with the Indian Government.

in actual danger, or in reasonable apprehension of danger, the services should be furnished at a special rate.

When the steam power of the engine is sufficient to overcome the resistance of the water, the engine will move the vessel. When the steam power of the engine is not sufficient to overcome the resistance of the water, the engine will not move the vessel.

is especially the case where the minor and even of the sailing vessel incur no risk to life. Thus the reward of the latter ought nevertheless, in the

liberal scale. The rule no longer obtains which in the interests of commerce and humanity has been the salvage reward proportionate to the value of the salvaged ship. The Courts are only bound to

to all the circumstances of the case, including value, the nature and extent of the interest, and the facts and circumstances surrounding the transaction, and to give such amount as is fit and proper with reference to the same.

4. Calculation of Salvage Award.—The Court is bound to consider the time, labour, skill, enterprise and risk of

the salvor, as well as the value of the property engaged in the service, and also the degree of danger from which the property is rescued, and the value of the property saved.

the property so rescued. Similar results are obtained of the promptness with which they are credited a higher rate of reward than other vessels by reason of the promptness with which they are credited

TO THE LADY OF THE LAKES, THE
"KATHAROS ADAM" THE
"POK 5" THE

at 12:30 p.m. on the 12th day of the month of May, 1964, the following information was obtained from the records of the Bureau of the Census, Washington, D.C., regarding the number of persons who were born in the United States and who were living in the United States on the 12th day of the month of May, 1964:

הנהגתו ופיקודו על כלל הציוד וההוצאות
הנדרשות לביצוע המשימה.

11-11-61

...
...
...

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

1. 1990年12月，在“中国书画函授大学肇庆分校”建校十周年之际，肇庆分校在肇庆市郊区的“肇庆分校建校十周年书画展”中，展出作品100多件，其中书法作品40多件，绘画作品60多件。

SALVAGE—continued.

not dispense the salvors from their reward in.

which

[I. L. R., 17 Cal., 84

Amount of sal-

cage awarded—Mode of estimating salvage services—

Allocation of salvage amongst officers and crew—

Bar—Costs.—On the 13th Aug. 1893 the S.S.

Cashmere, being (as found by the Court) in a

position of risk and hazard, which by a change in the

weather might have at once become one of danger,

was in need of assistance which the *Waver*

afforded her. The services, however, rendered by the

Waver were not of an extraordinary or protected

character. The owners of the *Waver* sued claim-

ing £1,000 for salvage services, and the master and

crew of the *Waver* filed a second suit claiming

£5,000. The defendant ship paid into Court

£5,000 for the owners of the *Waver* in the first

suit and £2,250 for the crew in the second suit. The

value of the S.S. *Cashmere* was £117,000, and

that of the cargo on board was £56,510. Held that

the amount paid into Court by the defendant ship

was not excessive.

[I. L. R., 24 Bom., 55

8.

—Devices to a sea-

interruption of services by accident—Towage services

convertible into salvage services—Distinction be-

tween towage and salvage services—The indicia of

salvage services—Costs—Practice of the Court in

giving costs—Any service rendered to a vessel in a

state of peril or risk or otherwise in distress, which

is not an ordinary towage service, may, in consequence of

forming it have all to be taken into consideration,

under which it was performed, and the danger in per-

mitting it to be taken into consideration.

or has received substantial injury. In considering

the question whether the service was of the nature of

salvage services, the risk of navigation, the difficulty

under which it was performed, and the danger in per-

mitting it to be taken into consideration.

An ordinary towage service may, in consequence of

forming it have all to be taken into consideration,

under which it was performed, and the danger in per-

mitting it to be taken into consideration.

or has received substantial injury. In considering

the question whether the service was of the nature of

salvage services, the risk of navigation, the difficulty

under which it was performed, and the danger in per-

mitting it to be taken into consideration.

An ordinary towage service may, in consequence of

forming it have all to be taken into consideration,

the work was performed. The shortness of service

may often be

and labour

consolidated ;

and no order is made giving the conduct of both

to one plaintiff, the promissory note is divided to sepa-

rate costs. Practice of the Court followed, and costs

given on the ordinary scale provided for in the rules

under the Civil Procedure Code, and not under the

schedule relating to Vice-Admiralty actions. In

the matter of the *Stamper* " *Deacons*,"

" *Interiors* " & " *Deacons*," " *Hughes*,"

" *Deacons*," " *Deacons*," " *Hughes*,"

I. L. R., 27 Cal., 860

SALVATION ARMY.

Obstruction of street by—

See Madras Police Act, 1888, s. 71.

[I. L. R., 14 Mad., 223

SALVAD.

See Grant—Construction of Grants

I. R., 18 I. A., 22.

See HEREDITARY OFFICE

[I. L. R., 16 Bom., 374

I. R., 19 I. A., 39

See OUDH STATES ACT, 1898

[I. L. R., 17 Cal., 444

I. R., 16 I. A., 183

I. R., 17 I. A., 54

I. L. R., 26 Cal., 81, 879

See OOWANAH, PRESIDENT OF

[I. L. R., 15 Mad., 101

I. R., 18 I. A., 149

See SERVICE TENURE

[I. L. R., 14 Bom., 62

See SETTLEMENT—CONVULSION

[I. L. R., 17 Bom., 40

See SETTLEMENT—EXPIRATION OF SETTLE-

MENT . I. L. R., 4 Bom., 367

—Endowment on—

See REGISTRATION ACT, s. 17, cl. (5)

[I. L. R., 14 Bom., 472

for collection of rents by 50

months.

See STAMP ACT, 1862, sec. 4, cl. 43

[I. B. L. R., 1. B., 65

—Grant of—

See HIS JUDICARY—ESTOPPEL BY JUDIC-

MENT . I. L. R., 17 Mad., 384

[I. R., 21 I. A., 83

SANAD—continued.

Production of—

See BOMAY DISTRICT MISTRIAL ACT, 1873, s. 33 . I. L. R., 15 Bom., 516

Title under—

See OUDH ESTATES ACT, 1869.

[I. L. R., 3 Cal., 645

1. Construction of sanad—

Mokumri.—Semi.—The word "mokumri" in a sanad does not necessarily import perpetuity. GOV. LIAQAT OR BEXGAT v. LATIH MOSSAVI KHAN [5 Moore's I. A., 467

2. Effect of.—The effect of the istemrar sanad, certain and limit the demand of the Government for revenue and to recognize and confirm, subject to this, the proprietary rights already in existence. KATANA v. LATIH OF SHIVANGUNG, 9 Moore's I. A., 639, distinguished. CASAPATAD ALI v. VIZAT RAGANADA KUNGASAVY SINGAPUTIA [8 Mad., 114

3. Right to cut timber—Prescriptive title—Construction of grant. In construing grants by former Governments, the rule of English law as to the construction of grants to the subject by the Crown is the correct rule to be applied by the Courts in India. Where a sanad contained only the words "The village of Manavali has been entered on you as inam, to be enjoyed by you, your son, and grandson. The Government dues of the village,—viz., the koolbie koolikunoo (i.e., all taxes and assessments), present taxes and future taxes, together with the house-tax, but exclusive of taxes due to bakdars, shall continue to be debited from year to year, from the year next succeeding,"—it was held that the plaintiff's sanad did not operate as an alienation of the soil of the village, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing upon the soil. The owner of such sanad, having only a right in the revenues and none in the soil of a village, cannot by thirty years' user become the proprietor of the timber. VAKAN JAKARDAN JOSHI v. COLLECTOR OF THANA . 6 Bom., A. C., 181

4. Grant of village by Government, Existing rights how affected by.—The grant of a village by Government, whether native or British, is subject to all existing rights against Government, whether or not the deed of grant contains an exception or reservation of such rights. Government cannot, by alienating its own rights in a village, albeit that the sanad purports to grant the village as a whole, extinguish or affect any substantive right therein appertaining to third persons, or convey to the grantee any larger or better estate or interest than was vested in Government. DESAI HIMATISINGI JORAVARSINGJI v. BHAVABHAI KAXABHAI . I. L. R., 4 Bom., 643

5. Grant by Government—Property in the soil.—A sanad by the State purporting to grant a village in inam, "including the waters, the trees, the stones and quarries,

SANAD—continued.

the mines, and the hidden treasures, but excluding the hakdars and inamdar," held to be a grant by the State of such proprietary right as it had in the soil of the village to the grantee. It is not open to the grantor to say that such words as the above mean nothing but land revenue. The saving of the rights of the bakdars and inamdar does not prevent the property in the soil, so far as it can be regarded as vested in Government, from passing to the grantee. KAVJI NARAYAN MAHAPATRI v. DADAJI BAPJI [I. L. R., 1 Bom., 523

6. Office of bloodies in Cuttack—Jagirdari right.—Plaintiff's ancestor held certain lands from Government under a settlement at a fixed rent of Rs 10-13-0, but was subsequently appointed bloodie with a remuneration of Rs 8, recoverable by deduction from the rent, leaving only 6 annas and 4 pice payable to Government by way of rent. Held that the sanad of appointment to the office of bloodie created no jagirdari right, but that on the contrary, the reservation of the rent of 6 annas 4 pice seemed to indicate that the tenancy remained, giving no right of exclusive occupancy to plaintiff as against defendant. CHOITON MOHANTY v. BHIKABAI MOHANTY . 17 W. R., 410

7. Nature of estate assigned—Prohibition of alienation.—The zamindar in possession by a sanad conveyed to A as the head of a branch of the grantor's family an estate, part of the zamindari, in lieu of maintenance to which A was entitled out of the zamindari, "to hold and enjoy possession from generation to generation," subject to an allowance for maintenance to a certain class of the family described as "lowahokans" and "mohalokans" (dependants and relations). A's heir afterwards alienated a part of the estate for a valuable consideration. Held, first, in the absence of evidence of any class of persons answering the description of "lowahokans" and "mohalokans" (which might have created a trust), that A took an absolute estate in the lands assigned to him; and, secondly, that the limitation in the sanad "from generation to generation" did not create such an estate as to operate as a bar to alienation by sale. NURSING DIX v. ROY KOYASHANATH . 9 Moore's I. A., 55

8. granted a taluk to his sister, K, by a sanad in the following terms: "You are my sister; I accordingly grant you as a taluk for your support the three villages, H, R, and K, belonging to my zamindari, with all rights appertaining thereto, at a taluk jumma of Rs 61. Being in possession of the lands and paying rent according to the taluk jumma, do you and the generations born of your womb successively (santan srenti kreme) enjoy the same. No other heir of yours shall have right or interest." At the date of the sanad K had one child, a daughter, C. She had afterwards a son, who died in her lifetime without issue, but whose widow, by his permission, adopted, after his death, a son, C. L. K held undisputed possession of the taluk, during her lifetime, and by her will devised it to C, her daughter, and C L, her grandson by adoption, in equal moieties. On K's death,

SANAD—concluded.

settled in 1802, and was in 1850 sold for arrears of Government revenue. The appellant claimed to set aside the sanad of 1807, on the ground that Government had no right to give such a sanad, but he contended that, if it had, it could be set aside by a purchaser at a Government sale. *Held* that the sanad was not a new grant, but a confirmation of the one made before the decennial settlement, and that Government was competent to give such confirmation. *Lopez v. MAD-DAY THAKOOR* 5 B. L. R., 521

S. C. Lopez v. MAD-DAY THAKOOR 13 Moore's I. A., 467; 14 W. R., P. C., 11

15. Proof of lost sanad—*Altiarsidars*—*Proof of title*—*Evidence*—*Long possession*.

Altiarsidars who had sanads, but who have lost them, may prove their title by other evidence, and long possession is a strong element in such proof. A sanad is not indispensable to the proof of mistri tenure. A mistri right or perpetuity of tenure, like other facts, may be proved by various means. *BARATI v. NARAYAN* [I. L. R., 3 Bom., 340]

16. *Bidance*—*Beng. Reg. XII of 1819, s. 28*—*Beng. Reg. XIV of 1825, s. 3*—*Title*.—Where an alleged original sanad was lost, the Judicial Committee, in view of the strict nature of the proof required in cases of claim under ancient sanads by Regulations II of 1819, s. 28, and XIV of 1825, s. 3, and taking all the circumstances into consideration, refused to consider the title under it established. *KORSETER v. SECRETARY OF STATE* [12 B. L. R., 120; 18 W. R., 349]

L. R., I. A., Sup. Vol., 10
[12 B. L. R., 120; 18 W. R., 349]

SANCTION.

of Board of Revenue.

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, s. 32 I. L. R., 2 Bom., 110

See PARTITION—FORM OF PARTITION.
[2 N. W., 26]

See PARTITION—MISCELLANEOUS CASES.
[5 B. L. R., 135; 13 W. R., 381]

of Court.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[16 W. R., P. C., 22]

I. L. R., 3 Mad., 103
I. L. R., 9 Cal., 810
I. L. R., 13 Bom., 187
I. L. R., 15 Bom., 594
I. L. R., 21 Mad., 91
I. L. R., 22 Mad., 378, 538

See COMPROMISE—CONSTRUCTION, ENFORCE-ING, ERROR OF, AND SETTING ASIDE DEEDS OR COMPROMISE.
[I. L. R., 6 Cal., 687]

SANAD—continued.

S. C. VENKATA NARASIMHA APPA ROW v. NARAYNA APPA ROW 6 C. L. R., 153

S. C. VENKATA NARASIMHA APPA ROW v. NARAYNA APPA ROW. *VENKATA NARASIMHA APPA ROW v. COURT OF WARDS* I. L. R., 7 I. A., 38

12. *Impartibility*—*Mad. Reg. XXV of 1802*.—A zamindar, originally impartible, having become the property of the Government, and having been granted by it to a zamindar, who, having been appointed by proclamation in 1801 and having been put into possession, received a sanad in 1803,—*Held* that the zamindar retained the quality of impartibility. Also that this quality had not been transmitted into impartibility either by the passing of the Regulation XXV of 1802 or by that law coupled with the issue of the sanad containing certain of its terms. *Tenkata Rao v. Court of Wards, I. L. R., 2 Mad., 128* (determining that the zamindar sanad could not be identified with any estate existing before the sanad of 1802 put it on the same footing with ordinary zamindars), distinguished. Reference made to *Beer Pertab Sahas v. Kuyender Pertab Sahas, 12 Moore's I. A., I*, as an authority for holding that a mode of acquisition which constitutes property as "self-acquired" in the hands of a member of an undivided family, and thereby subjects it to rules of devolution and of disposition different from those applicable to ancestral property, does not thereby destroy its character of impartibility. *MUTTA VADGAYADHA TRAYA v. DORASINGHA TRAYA* [I. L. R., 3 Mad., 290]

L. R., 8 I. A., 99

13. *Impartibility*—Where an ancient pottam was converted into a zamindari with a permanent assessment in 1803 by Government, and a "sanad-i-milkhat istemrari" (deed of permanent property) was granted to the zamindar with the usual stipulations, reserations, and directions, concluding with the words, "continuing to perform the above stipulations and to perform the duties of allegiance to the British Government, its laws and regulations, you are hereby authorized and empowered to hold in perpetuity to your heirs, successors, and assigns as the permanent assessment therein named, the zamindari of Sivagiri." *Held* that the Hindu law of succession was applicable, subject to such modifications as flowed from the impartible nature of the estate. *MUTTA VADGAYADHA TRAYA v. DORASINGHA TRAYA* [I. L. R., 3 Mad., 370]

14. *Rent-free sanad*—*Purchaser at Government sale*—*Confirmation issued by Government*.—In 1775 a rent-free sanad was granted to M for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men and take care of the rajpats. M died and a fresh sanad was, in 1786, granted to K and R, they being thought to be his heirs; but in 1807, M's true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to K and R, reciting the circumstances. The zamindari in which these lands were situated was

SANCTION FOR PROSECUTION

—continued—

8 — 24 W. H., Cr., 1
See REGISTRATION ACT, 1877, s. 83 (1866
s. 95)
4 B. L. R., Ap., 69 13 W. R., Cr., 21
See REVISION—CRIMINAL CASES—MIS-
CELLANEOUS CASES
[I. L. R., 20 Cal., 349
See Sessions Judge, JURISDICTION OF
[I. L. R., 16 Cal., 766
See SUPERINTENDENCE OF HIGH COURT—
CIVIL PROCEDURE CODE s. 622
[I. L. R., 3 All., 508
Application for—
See Practice—CRIMINAL CASES—AP-
PEALS I. L. R., 24 Cal., 482
Order for—
See APPEAL IN CRIMINAL CASES—ACT—
PRESIDENTIAL MAGISTRATE ACT
[I. L. R., 2 Cal., 466
See Letters Patent High Court Cr. 16
[I. L. R., 17 Mad., 106
Order granting or refusing—
See APPEAL IN CRIMINAL CASES—CRIMI-
NAL PROCEDURE CODE
[I. L. R., 18 All., 61
1 APPLICATION FOR AND GRANT OF,
SANCTION

1. Court to which application
should be made—CRIMINAL PROCEDURE CODE,
1869 s. 169—An application under s. 169 of
the Criminal Procedure Code praying for sanction to
maintain prosecution on a charge of perjury should,
as a general rule be first made to the Court before
which the perjury is alleged to have been committed.
In the matter of the petition of HAJIM OF
VEDATAGIRI
[I. L. R., 2 Bom., 481
See CRIMINAL PROCEDURE CODE, s. 167
(1872 s. 406) [I. L. H., 2 Bom., 481
See DISTRICT JUDGE, JURISDICTION OF
[I. L. R., 7 Mad., 314
See LIMITATION ACT 1877 Art. 178
[I. L. R., 10 All., 360
See MAGISTRATE, JURISDICTION OF—
REFERENCE BY OTHER MAGISTRATE
[I. L. R., 16 Mad., 401
See MAGISTRATE PROSECUTOR
[I. L. R., 8 All., 69
See PROMOTE AND ADMINISTRATION ACT,
18

[7 Mad., Ap., 12

SANCTION FOR PROSECUTION

to sue.
See COURT OF WARDS ACT (BRITISH ACT
IV OF 1875), s. 65
[I. L. R., 16 Cal., 69
[I. L. R., 17 Cal., 688
[I. L. R., 17 Cal., 243
[I. L. R., 27 Cal., 243
See MARRIAGE OF SEPARATE
[I. L. R., 12 Bom., 496
See CASES UNDER RIGHT OF SOLE—CHARGE
MIS AND THIRDS
SANCTION FOR PROSECUTION

to proceedings in lunacy.
8 B. L. R., Ap., 50
to sue.

SANCTION—continued

SANCTION FOR PROSECUTION FOR

1. APPLICATION FOR, AND GRANT OF, SANCTION—concluded.

was no further record of the proceedings. On an application to the High Court to revoke the sanction, *Held* that the mere fact of the charge laid by the complainant not having been proved was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211 of the Penal Code, and as, beyond the judgment of the Magistrate, there was nothing on the record to show that there were sufficient grounds for granting the sanction, it should be revoked. *Kandam NATH DAS v. MOHANS CHUNDRA CHUCKERBORTY* I. L. R., 16 Cal., 661

8. Prosecution of Municipal Corporation—*Presidency Magistrates' Act (IV of 1877)*, s. 39—*Public servant*.—A Municipal Corporation was not a public servant within the meaning of s. 39 of Act IV of 1877, and might therefore be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section. *EMPRESS v. MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA* I. L. R., 3 Cal., 758; 2 C. L. R., 520

9. Prosecution of Judge—*Sanction of Government—Criminal Procedure Code*, s. 167.—The sanction of Government is required for the prosecution of any Judge, if a complaint is made against him as Judge. Construction of s. 167 of the Criminal Procedure Code, 1861. *ANONYMOUS* 6 Mad., 4p., 22

10. Criminal Procedure Code, 1852, s. 197—*Sanction to prosecute Judge for words uttered on the bench*.—Where a Judge was charged with using defamatory language under a witness during the trial of a suit, *Held* that, complaint could not be entertained by a Magistrate without sanction. *IN RE GUDAM MUMAMAD SHARIF-UD-DAVLAN* I. L. R., 9 Mad., 439

11. *Sanction to prosecute a Judge—Criminal Procedure Code (Act V of 1898)*, s. 197.—A plea applied to the Chief Presidency Magistrate for sanction under s. 197 of the Criminal Procedure Code to prosecute an Honorary Magistrate for using insulting and defamatory language towards him in the course of the trial of a case, and sanction was refused. On application to the High Court, *Held* that no sanction under s. 197 of the Code is necessary, unless the Judge or public servant commits an offence in his judicial or official capacity. *Reg. v. Parshram Keshav, Bom. H. C., Cr., 61; Imperatrix v. Lakshman Sakhararam, I. L. R., 2 Bom., 481; and In re Streamanto Chatterjee, unreported, approved of. In re Ghulam Muhammad, I. L. R., 9 Mad., 439, dissented from. NARDO LAL BASAK v. MITTER* I. L. R., 26 Cal., 869 3 C. W. N., 539

SANCTION FOR PROSECUTION FOR

1. APPLICATION FOR, AND GRANT OF, SANCTION—continued.

3. Initiation of case needing sanction—*Initiation by party and by Court—Criminal Procedure Code*, 1861, ss. 170, 171.—In a case under s. 170, Criminal Procedure Code, 1861, the Court took no part in the matter except in the way of giving or refusing its sanction. S. 170 contemplated cases in which the Court itself took the initiative, but it was not intended that the Court should proceed in the manner there described except when the property or necessity of doing so is undisputable. In the matter of KOOND BHAKARE GHUR I. L. R., 171

4. *Initiation by Court—Criminal Procedure Code*, 1872, s. 468—*False charge—Penal Code*, s. 211.—There being nothing in the law requiring that sanction to prosecute under s. 211 of the Penal Code should only be granted upon application by a private prosecutor, a District Magistrate was competent, under s. 468 of the Code of Criminal Procedure, of his own motion to direct a prosecution where a complaint had been entertained and found to be false by a Magistrate subordinate to him. *JUGUT MOHINI DASSI v. MADHU SUBHAN DUTT* 10 C. L. R., 4

5. *Initiation by Court—Criminal Procedure Code*, 1872, ss. 470, 471.—There was a difference in the proceedings to be adopted when a sanction was given under s. 470, and the institution by the Court of its own motion of proceedings under s. 471. *GRAN CHUNDRA ROY v. PROFAR CHUNDRA DOSS* I. L. R., 7 Cal., 208; 8 C. L. R., 267

6. Effect of grant of sanction—*Criminal Procedure Code (Act X of 1882)*, ss. 195 and 478—*Civil Court's power to proceed under s. 578 after sanction given to a private person—Dismissal of a complaint by a private person—Effect of—The granting of sanction to a private person under cl. (c) of s. 195 of the Code of Criminal Procedure (Act X of 1882) does not debar a Civil Court from proceeding under s. 478; nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar, till set aside, to a proceeding under that section. QUERN-EMPRESS v. SHANKAR I. L. R., 13 Bom., 384*

7. Practice in granting sanction—*Criminal Procedure Code (Act X of 1882)*, s. 195—*Reversional power, Exercise of, by High Court*.—When subordinate Courts grant sanction to prosecute under s. 195 of the Criminal Procedure Code, it is incumbent on them so to frame the proceedings before them as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. A Magistrate, in disposing of a charge of theft, delivered the following judgment: "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted." There

SANCTION FOR PROSECUTION

2 WHERE SANCTION IS NECESSARY OR
—continued—
OTHERWISE IS NECESSARY OR

OTHERWISE—continued

17

Penal Code (Act XLV of 1860) s. 193—Giving

false evidence—Investigation by Police—No sanc-

tion under s. 195 of the Criminal Procedure Code is

necessary for taking cognizance of an offence under

s. 193 of the Penal Code when the alleged false

evidence is said to have been fabricated not in

relation to any proceeding pending in any Court but

in the course of an investigation by the police into

the matter of information received by them

Chandra Mohan Banerjee v. Balraj I L R 26

Calo 359 distinguished Jagat Chandra Mohan

Das v. Gurus Bhattas I L R, 28 Calo, 788

13 C W N, 481

18

Charges under s. 82 of Regis-

tration Act (III of 1877)—It is not necessary

that sanction should be given before instituting a

charge under s. 82 of the Registration Act Govt

Nath v. Keshub Singh I L R, 11 Calo, 666

19

Criminal Procedure Code,

s. 195—Registration Act, s. 41—Sanction of

Magistrate—Condition precedent to trial for forgery

of will registered—A Sub-Registrar acting under

s. 41 of the Registration Act 1877 is a Court

Procedure His sanction therefore was held to be

necessary under s. 195 before a Criminal Court could

take cognizance of an offence committed by the

Registrar while so acting. In re Vengalchalia

I L R, 10 Mad, 154

20

Police officer acting

under s. 361—Prosecution for giving false evidence

to a police officer—A police constable taken down

21

Registration Act

by Sub-Registrar—A Sub-Registrar not a Court

s. 31 of the Registration Act 1877 is not a Court

within the meaning of s. 195 of the Code of Criminal

Procedure Gurus Bhattas v. Subba

I L R, 11 Mad, 3

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SANCTION FOR PROSECUTION

2 WHERE SANCTION IS NECESSARY OR
—continued—
OTHERWISE—continued

OTHERWISE—continued

17

Penal Code (Act XLV of 1860) s. 193—Giving

false evidence—Investigation by Police—No sanc-

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I L R, 11 Mad, 3

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SANCTION FOR PROSECUTION

2. WHERE SANCTION IS NECESSARY OR

OTHERWISE—continued.

that no sanction was necessary as to the charge of forgery, and that the provisions of s. 195 of the Code of Criminal Procedure were not applicable. *Queen-Empress v. Vithaldas*, I. L. R., 11 Mad., 500.

23. Sub-Registrar—

*Forgery—Penal Code (Act XLV of 1860), ss. 468, 467—Court—Judicial inquiry—Administrative inquiry—A Sub-Registrar under the Registration Act (III of 1877) is not a Judge and therefore not a "Court" within the meaning of s. 195 of the Code of Criminal Procedure (Act X of 1892). His sanction is therefore not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. *In re Fankachalia*, I. L. R., 10 Mad., 154, dissented from. The word "forgery" is used as a general term in s. 463 of the Penal Code (Act XLV of 1860); and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X of 1892), so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the Penal Code. The definition of "Court" given in the Evidence Act (I of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Distinction between a judicial and an administrative inquiry pointed out. *Queen-Empress v. Tarda*.*

I. L. R., 12 Bom., 36.

24. Registration Act

(III of 1877), ss. 34, 35, 41—Forged document registered by Sub-Registrar—A mortgagor was charged with making a fraudulent alteration in his mortgage-deed which was then registered by a Sub-Registrar. Held that the sanction of the Sub-Registrar was not necessary for a prosecution on a charge of forgery. *In re Fankachalia*, I. L. R., 10 Mad., 154, and *Queen-Empress v. Subba*, I. L. R., 11 Mad., 3, explained. *Queen-Empress v. Sonabai* I. L. R., 12 Mad., 201.

25. Registrar—

*Sanction for prosecution for forgery—A Registrar acting under the Registration Act, ss. 72-75, is a Court for the purposes of the Criminal Procedure Code, s. 195, and his sanction is therefore necessary for a prosecution for perjury committed in respect of the representation of a document to him for registration. *Atchavaya v. Gangavaya*, I. L. R., 15 Mad., 138.*

26. Registrar—

*Registration Act, 1877, s. 73—A Registrar acting under s. 73 of the Registration Act, 1877, is not a Court within the meaning of s. 195 of the Code of Criminal Procedure. *Atchavaya v. Gangavaya*, I. L. R., 15 All., 141.*

27. "Court"—

Appraisement proceedings—Bengal Tenancy Act (VIII of 1885), ss. 69, 70—The word "Court" used in s. 195 of the Criminal Procedure Code, without the previous sanction of which offences

SANCTION FOR PROSECUTION

12. WHERE SANCTION IS NECESSARY OR

OTHERWISE—continued.

therein referred to, committed before it, cannot be taken cognizance of, has a wider meaning than the words "Court of Justice" as defined in s. 20 of the Penal Code. It includes a tribunal empowered to deal with a particular matter, and authorized to receive evidence bearing on that matter, in order to enable it to arrive at a determination. A Collector acting in appraisement proceedings under ss. 69 and 70 of the Bengal Tenancy Act is a Court within the meaning of the term as there used. Where therefore in certain appraisement proceedings some rent receipts, which were alleged to be forged, were filed by tenants before the Collector, and proceedings were subsequently taken against them before the Joint Magistrate charging them with offences under ss. 465 and 471 of the Penal Code,—Held that the Joint Magistrate could not take cognizance of the offences charged without the previous sanction of the Collector having been granted. *Ramchondras Sanyal v. Koral Singh alias Gopal Singh*.

I. L. R., 17 Cal., 872.

28. Criminal Procedure Code (Act X of 1892), s. 195—Complaint made to police—Penal Code (Act XLV of 1860), s. 211—Prosecution for laying false charge.—A complaint made before the police and judicially declared to be false is not an offence "committed in, or in relation to, any proceeding in any Court," within the meaning of sub-s. (b) of s. 195 of the Criminal Procedure Code (Act X of 1892); and no sanction is therefore necessary for the prosecution of the complainant under s. 211 of the Penal Code. *Putibai Rindas v. Mahomed Kaseem*.

29. Prosecution for false charge

in complaint made at police station—Criminal Procedure Code, 1872, s. 468.—A complaint made at a police station is not made before any Civil or Criminal Court, and, if it proved false, prosecution for it did not require the sanction of any Court under s. 468, Code of Criminal Procedure. Gov-
ernment of Bengal v. Gokool Chunder Chowdhury, 24 W. R., Cr., 41.

30. Giving false evidence before

a police pater—Criminal Procedure Code, 1872, ss. 467, 468—Bom. Act VIII of 1867 (Village Police), s. 13—Penal Code (Act XLV of 1860), ss. 181, 191, and 193.—A person who makes a false statement upon oath before a police pater acting under s. 13 of Bombay Act VIII of 1867 gives false evidence within the meaning of s. 191 of the Penal Code, and is punishable under s. 193; but his trial for that offence required no sanction, a police pater not being a Criminal Court within the definition of s. 4 of the Code of Criminal Procedure (see s. 468), although offences under Ch. X of the Penal Code committed before the same officer cannot be tried

31. Prosecution for perjury

committed in respect of the representation of a document to him for registration. *Atchavaya v. Gangavaya*, I. L. R., 15 Mad., 138.

32. Registrar—

*Registration Act, 1877, s. 73—A Registrar acting under s. 73 of the Registration Act, 1877, is not a Court within the meaning of s. 195 of the Code of Criminal Procedure. *Atchavaya v. Gangavaya*, I. L. R., 15 All., 141.*

33. "Court"—

Appraisement proceedings—Bengal Tenancy Act (VIII of 1885), ss. 69, 70—The word "Court" used in s. 195 of the Criminal Procedure Code, without the previous sanction of which offences

SANCTION FOR PROSECUTION

SANCTION FOR PROSECUTION

2 WHERE SANCTION IS NECESSARY OR

2 WHERE SANCTION IS NECESSARY OR

OTHERWISE—continued

OTHERWISE—continued

36 Forged document used in civil case—Power of Magistrate—Criminal Procedure Code, 1861, s. 170—S. 170, Code of Criminal Procedure, referred only to cases where a forged document had been put in evidence in a Civil Court, in other cases a Magistrate was competent *proprio motu* to inquire into allegations of forgery, and no sanction under a 170 Code of Criminal Procedure, was necessary. *QUEEN v. KAN PHANAY SIRON* 10 W. B., Cr. 5

31 Prosecution of police patrol—Criminal Procedure Code (1873), s. 456—*Prabhu*

1 L. R., 4 Bom., 479

37

38 Offences before or against Magistrate's Court—Code of Criminal Procedure (Act X of 1873), s. 468—The Magistrate's Court constituted by Bombay Act III of 1870 was a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure, therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Magistrate's Court, could not be entertained in the Criminal Court except with the sanction of the Magistrate's Court or of the High Court to which it is subordinate. *IN RE SAVANTA* 1 L. R., 5 Bom., 187

32 Prosecution on alternative charge—Giving false evidence in one Court or in another—Criminal Procedure Code, 1873, s. 470—When it is intended to charge a person with having made a false statement in the Court of a Magistrate or, alternatively, a false statement in the Court of a subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. *IN RE HARAJI SITAMAK* 11 Bom., 54

33 Accused to whom pardon has been tendered Contradictory statement of false evidence—When a pardon is legally ten-dered to the accused under s. 337 of the Criminal Procedure Code (Act X of 1873), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charge. *IN RE BALAJI SITARAM, 11 Bom., 84, followed. QUEEN v. KAN PHANAY SIRON, 10 W. B., Cr. 5, followed.*

34 Criminal Procedure Code (Act V of 1898), s. 449—*Tendin*

35 Charge of forgery—Pardon should be granted in respect of a state-ment made by a person who has accepted a tender of pardon should be granted without the sanction of the High Court, as provided by s. 339, cl (3) of the Local Query Expenses & NATU

36 Charge of forgery—Pardon should be granted in respect of a state-ment made by a person who has accepted a tender of pardon should be granted without the sanction of the High Court, as provided by s. 339, cl (3) of the Local Query Expenses & NATU

37

38 Offences before or against Magistrate's Court—Code of Criminal Procedure (Act X of 1873), s. 468—The Magistrate's Court constituted by Bombay Act III of 1870 was a Civil Court within the meaning of s. 468 of the Code of Criminal Procedure, therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Magistrate's Court, could not be entertained in the Criminal Court except with the sanction of the Magistrate's Court or of the High Court to which it is subordinate. *IN RE SAVANTA* 1 L. R., 5 Bom., 187

39 Departmental inquiry into the misconduct of a revenue officer—Judicial Proceeding—Bombay Land Revenue Code (Act X of 1893), s. 190—A Collector, on receiving information that his Deputy Chinai had attempted to obtain a bribe, ordered his Assistant Collector to make an inquiry into the matter, with a view to taking action under s. 31 of the Bombay Land Revenue Code The Assistant Collector found on inquiry that the charge of bribery was unfounded, and gave a sanction to prosecute the informant, and his witnesses for giving false evidence. This sanction was revoked by the Collector. The Chinai appealed to the High Court against the order revoking the sanction. *Held* that the inquiry made by the Assistant Collector was a departmental inquiry, and not a judicial proceeding, and that the Assistant Collector was not a Court. No sanction for prosecution was there-fore necessary under s. 190 of the Criminal Procedure Code. *IN RE CHORATIA MATURDAS* 1 L. R., 22 Bom., 936

40 Charge against Village Magistrate for alleged offence while acting not in a judicial capacity—Criminal Procedure Code (1873), s. 197—*Mad. Reg. 11*

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SANCTION FOR PROSECUTION

3. WHEN SANCTION MAY BE GRANTED

—concluded.

43. —Sanction "at any time"—*Criminal Procedure Code, 1861, s. 169*—"At any time,"—The words "such sanction may be given at any time" in s. 169, Code of Criminal Procedure, must be construed reasonably, and "any time" meant a time which did not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. *STRAYAK SANO* *SHEWGOOLAY SANO* 18 W. R., Cr., 62

44. —*Trial and conviction—Criminal Procedure Code, 1872, s. 170*—Under the words "at any time" in s. 170 of Act X of 1872, sanction to prosecute could not be given after the trial and conviction of the accused person. *MARBERS or INDIA v. SAK-SUM* I. L. R., 2 AII., 533

45. —*Charge of false evidence on alternative statements after tender of pardon*—The sanction necessary for a charge of giving false evidence made by the accused in retreating in a subsequent judicial proceeding a statement made by him on oath after a tender of pardon can only be granted before, and not after, the commencement of the prosecution. *QUEEN v. DADA JIVA* I. L. R., 10 Bom., 190

4. NOTICE OF SANCTION.

46. —*Necessity of notice—Criminal Procedure Code (Act X of 1882), s. 195, cl. c, para. 2*—A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for has had notice of the application and an opportunity of being heard. *ABHAKH SINGH v. KHUB LALE* I. L. R., 10 Cal., 1100

47. —*Criminal Procedure Code (Act X of 1882), s. 195—Notice to accused*—Held by the Full Bench that no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. In *THE MATTER OF THE ELECTION OF KRISHNANAND DAS. KRISHNANAND DAS v. HARI BABA* I. L. R., 12 Cal., 58

48. —*Criminal Procedure Code, s. 195—Notice to accused*—A conviction for preferring a false complaint is not illegal only by reason of the prosecution having been sanctioned without notice previously given to the accused. Sanctioning a prosecution for an offence is a judicial act, and the party to whose prejudice it is done must be previously heard and a judgment

SANCTION FOR PROSECUTION

2. WHEN SANCTION IS NECESSARY OR

OTHERWISE—concluded.

of 1916—*Penal Code, s. 19—Judge*—A Village Magistrate, having been apprized of a disturbance in his village, forcibly separated the combatants, one of whom thereupon preferred a charge against him of causing hurt. The complaint was taken by the Sub-Magistrate upon his file without any previous sanction of the Government or other authority mentioned in s. 197 of the Code of Criminal Procedure. The Village Magistrate raised the objection that the prosecution could not legally be proceeded with until such sanction had been first obtained. The Sub-Magistrate held that such sanction was unnecessary, and kept the case on his file and commenced a petition to the District Magistrate raising the same ground of objection, whereupon the District Magistrate quashed the whole of the proceedings, holding that the Sub-Magistrate had no jurisdiction to try the case against a village officer without sanction having been first obtained. Held that sanction was not necessary under s. 197 of the Code of Criminal Procedure. The Village Magistrate, while preventing an officer, was not acting in the capacity of a Judge or a public servant not removable from office without the sanction of Government, and therefore the sanction referred to had no application. Held also that the order of the District Magistrate quashing the proceedings of the Sub-Magistrate was not without jurisdiction. *Scamle*—"That a Village Magistrate exercising jurisdiction, and trying an offender under Regulation XI of 1816, is a Judge within the meaning of s. 197 of the Code of Criminal Procedure and s. 19 of the Penal Code. *KANDASAMI CURRI v. SOLI GOVINDAN*

I. L. R., 23 Mad., 540

3. WHEN SANCTION MAY BE GRANTED.

41. —Sanction previous to prosecution—*Illegal condition—Criminal Procedure Code, 1861, s. 167*—s. 167 of the Code of Criminal Procedure required that sanction to prosecutions therein mentioned should be given before any such prosecution was commenced, and until the sanction was obtained, the tribunal by which the offence was tried had no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. *Reg. v. PARSANATH KESAV 7 Bom., Cr., 61*

See *QUEEN v. MONIMA CHUNDER CHOUKRAMDITY* I. L. R., 28 : 15 W. R., Cr., 45

42. —Prosecution for perjury—

Sanction after order for commitment to sessions—Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed at any time, even after the order for commitment to the sessions has been made. *QUEEN v. GOWAR SINGH* I. L. R., A. Cr., 10

SANCTION FOR PROSECUTION

—continued

6 NATURE, FORM, AND SUFFICIENCY OF SANCTION—continued.

§ 468 of the Criminal Procedure Code, was not a direction to prosecute, but was a permission granted to a private person to exercise his own unfettered discretion as to whether he would take proceedings or not. In the matter of the petition of GURJAY MOHAR, GURJAY MOHAR & CUNJ JAY [I L R, 8 Cal, 435, 10 C L R, 46]

§ 52. —Sanction by High Court to prosecution for perjury.—*Drummond* that proper procedure will be adopted.—Where the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge. *Khan v. Siraj* 25 W. R., Cr. 14

§ 53. —Form of sanction.—Sanction in writing and attached to record.—It is very clear that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative. *Qureshi v. Khan* 17 Mad, 58

§ 54. —The law does not require the sanction to a prosecution to be given in any particular form of words. *Qureshi v. Khan* 12 N. W. 132 Agri. R. B. Ed 1874, 208

§ 55. —Criminal Procedure Code (1882), s 190.—Form of sanction for prosecution for false evidence.—Requisites of a charged may be definitely informed what in the criminal act alleged against him. In *Shan v. Agha* 1 I. R., 19 Bom, 363

§ 56. —Criminal Procedure Code, 1861, s 169-170.—Statement of parties entered officers.—When a Civil Court gives sanction to a prosecution under ss 169 and 170, Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction. *Qureshi v. Ova Mohar* 13 W. R., Cr. 25

§ 57. —General view.—*Qureshi v. Ova Mohar* 13 W. R., Cr. 25

§ 58. —*Criminal Procedure Code, 1872, s. 470.—Requisites of proper sanction.—A sanction for a prosecution under s. 470 of the Criminal Procedure*

4 NOTICE OF SANCTION—continued.

4 NOTICE OF SANCTION—continued.

Magistrate dismisses the original complaint upon a report from the police, there is no legal evidence before him on which to form his judgment. In cases in which the Magistrate examines the complainant and hears the evidence and acquiesces or discharges the accused, and the, without notice to the complainant, sanctions his prosecution for perjury a false charge, sanction cannot be said to be improperly given. *Qureshi v. Khan* 1 I. R., 10 Mad, 232

§ 49. —Criminal Procedure Code, s 195.—A Magistrate, in disposing of a charge of theft, delivered the following judgment.

"The charge of theft of doors and windows is not provided at all against the accused. They are acquitted." There was no further record of the proceedings. Immediately on the judgment being delivered, the pleader appeared for the accused

intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant. The accused renewed the application the following day without notice to the Magistrate, and the Magistrate granted the sanction. On an application to the High Court to revoke the sanction.—Held that the Magistrate did not exercise a proper discretion under the circumstances.

§ 50. —Criminal Procedure Code (Act V of 1898), s 195.—Omission to give accused opportunity to be heard.—Although notice is not invariably necessary in cases under the provisions of a judicial act, and there may be prosecution referred to, the grant of an order sanctioning

§ 51. —Nature of sanction.—*Qureshi v. Ova Mohar* 13 W. R., Cr. 25

6 NATURE, FORM, AND SUFFICIENCY OF SANCTION.

§ 468.—The sanction to prosecute, contemplated in obtaining sanction.—Criminal Procedure Code, 1872, s. 470.—Requisites of proper sanction.—A sanction for a prosecution under s. 470 of the Criminal Procedure

SANCTION FOR PROSECUTION

5. NATURE, FORM, AND SUFFICIENCY

—continued.

OF SANCTION—continued.

ss. 169 and 170.—Where persons were charged with offences under ss. 471 and 193 of the Penal Code, and for which therefore the sanction of the Civil Court was necessary under ss. 169 and 170 of Act XXV of 1861,—*Held* that the sanction, which simply gave permission, and did not specify the particular act or acts and the particular words which constituted the offences, was insufficient. *QUEEN v. GARNYD CHANDRA GHOSE* [7 B. L. R., 28 note : 10 W. R., Cr., 41

63. *Criminal Procedure Code (1882), s. 195—Necessary contents of application for sanction.*—An application for sanction to prosecute for forgery or perjury must indicate precisely the document in respect of which forgery is said to have been committed, or must set forth in detail the statements alleged to be false showing the place where and the occasion on which such alleged false statements were made. *BATWANT SINGH v. UVED SINGH* I. L. R., 18 All., 203

64. *Criminal Procedure Code (Act V of 1898), s. 195—Notice to person to prosecute whom sanction is sought—Proceedings before Sessions Court—Proper exercise of discretion.*—A Sessions Court, when granting sanction to prosecute, should so frame the proceedings before it as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. An order of a Sessions Judge, sanctioning a prosecution, containing nothing from which the High Court could conclude that he had directed his mind to the real question in such cases, namely, whether there was a *prima facie* case on which a prosecution could be instituted with a fair chance of success, the High Court revoked the sanction. *PAKAPART SASTRI v. SUBBA SASTRI* [I. L. R., 23 Mad., 210

65. *Giving false evidence in a judicial proceeding—Penal Code (Act XLV of 1860), s. 193—Granting sanction to prosecute youthful offenders.*—A sanction to prosecute under the provisions of s. 193 of the Criminal Procedure Code (Act X of 1882) must specify the Court in which, and the occasions on which, the offence was committed; and where the offence is that of giving false evidence in a judicial proceeding (s. 193, Penal Code), it should further specify the particular statements in respect of which the offence is imputed. Where therefore sanction was granted to prosecute certain persons, one of whom was a boy of eleven years, for giving false evidence in a deodity case and the sanction did not contain the essentials referred to,—*Held* that it was defective in form and could not stand, and that the High Court could not take it upon itself to rectify the informality by supplying the necessary particulars. *Held* also that the sanction for prosecution against the boy-petitioner was unsatisfactory

SANCTION FOR PROSECUTION

5. NATURE, FORM, AND SUFFICIENCY

—continued.

OF SANCTION—continued.

Code must designate the Court where the false statement was alleged to have been made and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted. *IN RE BATAJI SIVARAM* [11 Bom., 34

59. *Criminal Procedure Code, 1882, s. 195—False evidence—Specification of place and occasion of offence.*—A sanction to a prosecution for giving false evidence granted under s. 195 of the Criminal Procedure Code should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized. *HAR DIAL v. DOORGA PRASAD* I. L. R., 6 All., 105

60. *Specification of place and occasion of offence—Criminal Procedure Code, 1882, s. 195.*—Sanction to a prosecution granted under s. 195, Criminal Procedure Code, 1882, should specify the Court or other place in which, and the occasion on which, the offence was committed; and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary," within the meaning of s. 476 of the Code. *KURBESS v. NAROTAM DAS* I. L. R., 6 All., 98

61. *Specification of offence—Criminal Procedure Code, 1882, s. 195—False evidence—Preliminary inquiry.*—In a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitrator decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the High Court for sanction to prosecute the plaintiff, without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or specifying the offence or offences in respect of which sanction was granted. *Held* that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further, that as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution. *PARSOTAM LAL v. BIRAI* I. L. R., 8 All., 101

62. *Omission to specify particulars of offence—False evidence—Criminal Procedure Code (Act XXV of 1861)*

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G. POWER TO GRANT SANCTION—continued.

91. For investigation.—A Court had power to send a case for investigation to a Magistrate under s. 171 of the Criminal Procedure Code, 1861, where no particular sanction had been required. *Prasad Choudhary v. Prasad Choudhary* (W. R., F. B., 71)

92. What Courts can give sanction.—The Courts that had jurisdiction to grant a sanction to proceedings before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. In the matter of the petition of *Prasad Choudhary* (W. R., F. B., 71)

93. What Courts can give sanction.—The Courts that had jurisdiction to grant a sanction to proceedings before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. In the matter of the petition of *Prasad Choudhary* (W. R., F. B., 71)

94. Power to sanction where no particular party is accused—Sending case

95. Implied power—Criminal Procedure Code, 1861, s. 167—Prosecution of public servant.—Upon the construction of s. 167 of the Criminal Procedure Code, it was held that the section by implication vested in the Court or authority to whom the Judge or other public servant not removable, etc., was subordinate, the power of sanctioning or directing such prosecution. It did not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority therefore has it unless there is a limitation. *Queen v. Krishna Rao* (7 Mad., 58)

96. Power to sanction where no particular party is accused—Sending case

97. Power of Appellate Court to sanction prosecution of abetment.—Where an offence is committed against a Court of first instance, the Appellate Court to which it was subordinate was competent to sanction a prosecution under Ch. XI of the Criminal Procedure Code, 1861. Sanction to such a prosecution might be given even if the offence was abetment. In the matter of *Prasad Choudhary* (W. R., F. B., 71)

98. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

99. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

100. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

101. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

102. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

103. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

104. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

105. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

106. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

107. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

108. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

109. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

110. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

111. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

112. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

113. Power of Civil Court—Criminal Procedure Code, 1861, s. 170.—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. *Ex parte Mahalingam* (6 Mad., 191)

SANCTION FOR PROSECUTION

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6 POWER TO GRANT SANCTION—continued.

that, although police officers in a district were generally subordinate to the District Magistrate the Code of Criminal Procedure was not such subordination of police nor could the report of the police officer be regarded as a complaint under a 195 of the Code of Criminal Procedure, and therefore no proper sanction had been obtained. The defect, however, was cured by a 537 of the Code of Criminal Procedure, as no failure of justice had been occasioned. *RAMSOMI LAL v QUEEN EMRESS I L R, 27 Cal, 453 [4 C W N, 594]*

104 ————— Criminal Pro
cedure Code 1872 s 453—Relative positions of m

DATE I L R, 2 AU, 205

105 ————— Criminal Pro

(Act X of 1872) a Magistrate of the first class was subordinate to the Magistrate of the district a name

the refusal by the former to give such sanction himself. *Semle—That the Sessions Court had not power to give such sanction. I L R, 2 Bom, 384*

106 ————— Criminal Pro
cedure Code, 1872 s 458—Subordinate Judge—District Judge—For the purpose of sanctioning a criminal prosecution under s 468 of the Code of Criminal Procedure, the Court of the subordinate

107 ————— Criminal Pro
cedure Code, 1872 s 458—Subordinate Judge—District Judge—For the purpose of sanctioning a criminal prosecution under s 468 of the Code of Criminal Procedure, the Court of the subordinate

Magistrate—Criminal Procedure Code, 1872 s 458—Subordinate Judge—District Judge—For the purpose of sanctioning a criminal prosecution under s 468 of the Code of Criminal Procedure, the Court of the subordinate

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—continued

6 POWER TO GRANT SANCTION—continued

of party to proceeding—the power given to a Civil Court under Ch. XXV of the Code of Criminal Procedure (Act X of 1882) to take action regarding "any offence referred to in a 195" is not ordinarily restricted in regard to offences relating to documents, to such offences only when committed by a party to the proceeding in which the document was given in evidence. It extends also to such offences when committed by a witness of the party. *[V R DAVI VAYAD BHAYAT I L R, 18 Bom, 681]*

100 ————— Power of Magistrate—Sanction of Collector—Prosecution of kulharas for false report—Criminal Procedure Code 1861, s 167—The sanction for the prosecution of a kulhar for making a false report as a public servant required by s 167 of the Code of Criminal Procedure might be given by the Magistrate or by the patti to whom such kulhar was subordinate. The sanction of the Collector was not necessary for that purpose. *I L R, 7 Bom, Cr, 64*

101 ————— Power of Revenue Court—Criminal Procedure Code, 1872 s 468 469, 470

Within the meaning of ss. 468 and 469 of Act X of 1872 "Observations by STAM, C.J. on the "subordination" of Courts of Revenue to the High Court within the meaning of ss 468 and 469 of Act X of 1872" *EMRESS v SAMSONI I L R, 2 AU, 633*

I L R, 6 AU, 98

103. ————— Information by accused of offence—Report of a police officer of information—Sanction by District Magistrate on police report—Judicial proceeding—Subordination of police officer to District Magistrate—Criminal Procedure Code (Act X of 1898), s 193 and 537—Penal Code (Act XXV of 1860), s 182—The accused gave certain information to the police, who after investigating the matter reported that the information given was false and constituted an offence under s. 182 of the Penal Code. The District Magistrate on this sanctioned the prosecution of the accused, who was convicted and sentenced under that section. The accused appealed against the conviction and sentence. His appeal was heard and dismissed by the District Magistrate, who had previously sanctioned his prosecution. On revision the accused contended that the District Magistrate, having sanctioned his prosecution on the police report, was not competent to hear the appeal. *Held*

103. ————— Information by accused of offence—Report of a police officer of information—Sanction by District Magistrate on police report—Judicial proceeding—Subordination of police officer to District Magistrate—Criminal Procedure Code (Act X of 1898), s 193 and 537—Penal Code (Act XXV of 1860), s 182—The accused gave certain information to the police, who after investigating the matter reported that the information given was false and constituted an offence under s. 182 of the Penal Code. The District Magistrate on this sanctioned the prosecution of the accused, who was convicted and sentenced under that section. The accused appealed against the conviction and sentence. His appeal was heard and dismissed by the District Magistrate, who had previously sanctioned his prosecution. On revision the accused contended that the District Magistrate, having sanctioned his prosecution on the police report, was not competent to hear the appeal. *Held*

SANCTION FOR PROSECUTION

6. POWER TO GRANT SANCTION—continued.

proceeding. IN THE MATTER OF THE PETITION OF MATURU DAS I. L. R., 16 All., 80

Power of Sessions Judge—Sanction given on inquiry ordered during trial—Where, during an inquiry into allegations that a confession had been made under such circumstances as to render it inadmissible in evidence, the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper and eminently calculated to defeat the object of the inquiry. REG. v. KASHT-MATH DINKAR 8 Bom., Cr., 126

113. Criminal Procedure Code, 1882, s. 195—Sanction to prosecute—“Subordinate Court.” What is a—Sanction to prosecute refused by Subordinate Judge in suit over Rs. 5,000—Jurisdiction of District Court to grant sanction in cases to which appeal lies to High Court from Subordinate Judge.—In matters relating to the grant of sanction to prosecute under s. 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as “subordinate” of which an appeal lies to some other Court, e.g., in which an appeal lies to some other Court, e.g., first class Subordinate Judge for sanction to prosecute his judgment-debtor under ss. 206 and 424 of the Indian Penal Code for fraudulent concealment of certain moveable property, worth about Rs. 10,000, awarded by the decree. This application was rejected by the Subordinate Judge. The District Judge declined to interfere on the ground that, the decree being appealable to the High Court, the High Court alone could deal with the application under s. 195 of the Criminal Procedure Code. Held that, though the decree in the present instance was appealable to the High Court, still, as appeals from the Court of the first class Subordinate Judge ordinarily lay to the District Court, the former was subordinate to the latter Court within the meaning of s. 125 of the Criminal Procedure Code. IN RE ANANT RAMCHANDRA LOTTIKAR I. L. R., 11 Bom., 438

114. Criminal Procedure Code, s. 195—Sanction for prosecution of witnesses for perjury by Village Munsif.—V was tried and convicted under s. 193 of the Penal Code for giving false evidence before the Court of a Village Munsif in a suit in which V was defendant. The Village Munsif sanctioned the prosecution of V under s. 195 of the Code of Criminal Procedure. On appeal, the Sessions Judge acquitted V on the ground that a Village Munsif had no power to sanction the prosecution because s. 195 of the Code of Criminal Procedure did not apply. Held that the Village Munsif had power to grant the sanction, and that the objection to the conviction was bad in law. QUEEN v. KURASSI I. L. R., 11 Mad., 735

110. Power of Civil Judge—Criminal Procedure Code, 1861, ss. 170, 171—Power of Judge to make order where application had been made to Sudder Ameen in whose Court offence occurred, and refused.—The Civil Judge made an order, under ss. 170 and 171 of the Penal Code, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and, if so, by whom. Held that he had jurisdiction to make the order, notwithstanding the Sudder Ameen had been applied to and had refused to make a similar order. BANARJEE v. KANAGATE MOITAY

111. Power of District Judge to order prosecution for forgery committed before Munsif—Witness—Criminal Procedure Code (1862), ss. 195 and 476—Where a defendant in a suit in the Court of a Munsif applied to the District Judge for sanction under s. 195 of the Code of Criminal Procedure to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but, purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness,—Held that the Judge's order was made without jurisdiction, the offence in respect of which the sanction was directed not having been committed before him nor brought to his notice in the course of a judicial

109. Power of Small Cause Court Judge—Proceeding before Registrar—Forgery—Criminal Procedure Code (Act XXV of 1861), s. 170.—A specially registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code. Held that he was justified in sanctioning the prosecution, but not in setting aside the decree. QUEEN v. NAWAB SINGH 3 B. L. R., A. Cr., 9

108. Power of Sub-divisional Magistrate—Criminal Procedure Code, 1882, s. 195—Sanction to prosecute for false evidence granted by Magistrate on revising calendar.—A Sub-divisional Magistrate, after perusing the calendar of a case tried by a Magistrate subordinate to him, sent for the record, and passed an order under s. 195 of the Criminal Procedure Code, sanctioning the prosecution of a witness in the case for perjury. Held that the order was illegal. QUEEN v. KURASSI I. L. R., 7 Mad., 560

107. Power of Small Cause Court Judge—Proceeding before Registrar—Forgery—Criminal Procedure Code (Act XXV of 1861), s. 170.—A specially registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code. Held that he was justified in sanctioning the prosecution, but not in setting aside the decree. QUEEN v. NAWAB SINGH 3 B. L. R., A. Cr., 9

106. Power of Small Cause Court Judge—Proceeding before Registrar—Forgery—Criminal Procedure Code (Act XXV of 1861), s. 170.—A specially registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code. Held that he was justified in sanctioning the prosecution, but not in setting aside the decree. QUEEN v. NAWAB SINGH 3 B. L. R., A. Cr., 9

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104. Power of District Judge to order prosecution for forgery committed before Munsif—Witness—Criminal Procedure Code (1862), ss. 195 and 476—Where a defendant in a suit in the Court of a Munsif applied to the District Judge for sanction under s. 195 of the Code of Criminal Procedure to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but, purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness,—Held that the Judge's order was made without jurisdiction, the offence in respect of which the sanction was directed not having been committed before him nor brought to his notice in the course of a judicial

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—continued.

6. POWER TO GRANT SANCTION—continued.

349, followed. A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under s. 613 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group. *MANOJED BHAKT v. QUREN-EXPRESS*

120. [I. L. R., 23 Cal., 532

*Criminal Procedure Code (1882), s. 476—Inquiry before issue of an order under s. 144—Criminal Procedure Code—Judicial proceeding—False evidence.—A Magistrate, making an inquiry before issue of an order under the Criminal Procedure Code, s. 144, is acting in a stage of a judicial proceeding, and has therefore jurisdiction to take action under s. 476, if he is of opinion that false evidence has been given before him. *QUREN-EXPRESS v. THAKKASARMA CHARI**

121. [I. L. R., 19 Mad., 18

*Criminal Procedure Code (1882), s. 195—Power of Court to go outside record.—A Magistrate, in deciding whether to sanction under Criminal Procedure Code, s. 195, a prosecution for giving false evidence, has power to hold an inquiry and record other evidence besides that in the case before him, in the course of which the offence is supposed to have been committed. *QUREN-EXPRESS v. MORTA**

122. [I. L. R., 20 Mad., 339

*Criminal Procedure Code (1882), s. 195—"Court to which appeals ordinarily lie"—Collector—District Judge.—For the purpose of granting or revoking a sanction to prosecute refused or granted under s. 195 of the Code of Criminal Procedure, an Assistant Collector of the first class is subordinate to the District Judge. *HARI PRASAD v. DEBI DIAL, I. L. R., 10 All., 582, followed. Queen-Express v. Ajudhia Prasad, Weekly Notes, All. (1895), 121, considered. SHANKAR DIAL v. VERNABLES**

123. [I. L. R., 19 AU., 121

*Criminal Procedure Code (1882), s. 195—Sanction for prosecution—Complaint found to be false on an investigation by the police, but without judicial enquiry.—When a complaint was found to be false on an investigation being made by the police, and thereupon sanction was given under s. 195, Criminal Procedure Code, for prosecuting the complainant for substituting a false complaint,—Held that the sanction was bad in law, as it was given without a judicial investigation of the complaint. *MUKUNDA BHARI v. BHIKARI CHAMAN MANJARI**

124. [I. C. W. N., 452

Power of Court to grant sanction with regard to case pending in another Court—Power of Court to dispose of case pending on the file of another Magistrate without withdrawing it.—Held that the Deputy Commissioner had no power to pass an order of dismissal under s. 203, Criminal Procedure Code, in a

6. POWER TO GRANT SANCTION—continued.

case which he had transferred to the First Extra Assistant Commissioner, and which was at the time pending in the Court of the latter, nor to grant sanction under the circumstances. *KUTAB ALI v. EXPRESS*

125. [I. L. R., 23 Cal., 532

*Criminal Procedure Code (1882), s. 195—False information with intent to cause public servant to use his lawful power to the injury of another person—Criminal Procedure Code (Act V of 1898), ss. 195, 476—Judicial proceeding.—A Deputy Commissioner, upon receiving a petition complaining of various acts of misconduct by the Tahsildar and others of the locality, referred the matter to the Sub-Divisional Magistrate for enquiry and report. The Sub-Divisional Magistrate, in consequence of an opinion formed by him during the enquiry, proceeded to try the petitioner, who was one of the persons who made the petition originally to the Deputy Commissioner, and convicted him under s. 122, Penal Code. *Held* that the Sub-Divisional Officer had no jurisdiction to institute the proceedings or to grant sanction, inasmuch as the complaint which led to this trial was not made to him, but was made to the Deputy Commissioner without whose previous sanction or complaint no trial under s. 182, Penal Code, could be held. *That* s. 476, Criminal Procedure Code, did not apply to the proceedings, as they were not judicial proceedings. *ASHTUTHA v. EXPRESS**

126. [I. L. R., 19 AU., 121

*Criminal Procedure Code, 1861, s. 169.—The discretion vested in a Civil Court under s. 169, Code of Criminal Procedure, of sanctioning a criminal charge of perjury was one that should be most carefully exercised. *QUREN v. POOSA RAM 6 W. R., Cr., 11**

127. [I. L. R., 8 Cal., 440

Case settled without evidence being gone into—Criminal Procedure Code, 1872, s. 468.—Per GABTH, C.J.—Where a case was settled without evidence being gone into, the Court in which the suit was brought, even if it had power to sanction criminal proceedings against any of the parties to such suit under s. 468 of Act X of 1872, was guilty of great impropriety and indiscretion in so doing, inasmuch as it could have had no opportunity of judging of the bona fides of the claim or defence. In the matter of the petition of KASI CHUNDER MAZUMDAR, JUDGE CHUNDER MAZUMDAR v. KASI CHUNDER MAZUMDAR

128. [I. L. R., 8 Cal., 440

S. C. KAZI CHUNDER MAZUMDAR v. JUDGE CHUNDER MAZUMDAR

Proof before Court of commission of offence—Criminal Procedure Code, 1882, s. 195.—Before granting a sanction to prosecute under s. 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to

SANCTION FOR PROSECUTION

—continued.

8. REVOCATION OF SANCTION—continued.

s. 195.—The power of revoking given under s. 195 (b) is only in respect of sanctions, and not of complaints.

[I. L. R., 23 Mad., 205

139.

—Power to revoke sanction—Distinction between a sanction granted to a private person and a complaint by a Court—Criminal Procedure Code (Act X of 1882), ss. 195 and 476.—S. 195 of the Criminal Procedure Code (Act X of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court to which such Court is subordinate may revoke the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court. *Ishri Prasad v. Sham Lal*, I. L. R., 7 All., 871; *Queen v. Baijoo Lal*, I. L. R., 1 Cal., 450; and *Gyan Chander Roy v. Prab Chander Dass*, I. L. R., 7 Cal., 208, referred to. *QUEEN-KRISHNA v. KACHAPPA*

[I. L. R., 13 Bom., 109

140.

Criminal Procedure Code, 1882, ss. 195, 476—High Court, jurisdiction of.—The High Court has no power on appeal to set aside a complaint duly made by a subordinate Court under s. 476 of the Code of Criminal Procedure. *QUEEN-KRISHNA v. NAKAKA*

[I. L. R., 13 Mad., 144

But see *KHEERU NATH SIKDAR v. GRISH CHANDER MOOKERJEE*. I. L. R., 16 Cal., 730 and IN THE MATTER OF THE PETITION OF MATHERA DAS

I. L. R., 16 All., 80

where the High Courts of Calcutta and Allahabad, respectively, have held that the High Court has power to set aside such an order on revision.

141.

Criminal Procedure Code (1882), s. 195—Revocation of sanction granted in respect of an offence committed in the course of a civil suit, the valuation of such civil suit is immaterial to the question of the Court to which an application under s. 195 of the Code of Criminal Procedure for revocation of the order granting sanction will lie. *GANGA DEVI v. SHER SINGH*

[I. L. R., 17 All., 51

Criminal Procedure Code (Act X of 1882), ss. 195, 369—Sessions Judge's power to review his order in proceedings taken to revoke sanction.—A Sessions Judge, having once refused to revoke a sanction granted by a subordinate Court under s. 194 of the Criminal Procedure Code (Act X of 1882), has no jurisdiction afterwards to review his order and set aside the sanction. An application to a Sessions Judge for revocation of a sanction granted under s. 195 of the Code is a criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be

SANCTION FOR PROSECUTION

—continued.

7. DISCRETION IN GRANTING SANCTION

—concluded.

approved. *SANGHI VIRA PANDIA CHINNATAMBIAH v. QUEEN*. *ZAMINDAR OF SIVAGIRI v. QUEEN*

[I. L. R., 6 Mad., 29

135.

Criminal Procedure Code, ss. 195, 435, 478—Forged documents filed in Court—Prosecution ordered by Court as to documents not on record—Power of High Court in revision.—Certain documents having been put into Court in a suit pending before a District Munsif, but not given in evidence, the District Munsif made an order for the prosecution of the parties who so put them in, on the ground that the documents were forged. *Held* that the High Court had power to revise the proceedings of the District Munsif; that the District Munsif was not competent to go beyond the record. *Zamindar of Sivagiri v. Queen*, I. L. R., 6 Mad., 29, followed, and that the order was wrong and should be set aside. *ABDUL KHADAR v. MEERBA SAHAB*

I. L. R., 15 Mad., 224

136.

Criminal Procedure Code, 1882, ss. 202, 203, 476—Penal Code, s. 211—Complaint dismissed without preliminary inquiry into the truth of complaint.—A Magistrate of the first class, after considering the result of an investigation by a police officer under s. 202 of the Code of Criminal Procedure, dismissed a complaint as false, and passed an order sanctioning the prosecution of the complainant for an offence punishable under s. 211 of the Penal Code, and directed a third class Magistrate to hold a preliminary inquiry, the offence being cognizable by the Court of Sessions only. *Held* that, as there was no application before the first class Magistrate for sanction to prosecute, the order must be taken to be a complaint made by the said Magistrate, and therefore, under s. 476 of the Code of Criminal Procedure, the third class Magistrate had no jurisdiction to hold an inquiry. *Held* also that the first class Magistrate ought to have held a preliminary inquiry under s. 476, in order that the complainant might have an opportunity of showing the truth or bond fides of the complaint. *QUEEN v. YENDAVA CHANDRAMMA*

[I. L. R., 7 Mad., 189

137.

Forgergy—Bi-
deness of charge, Necessity for.—Sanction to a prosecution of a witness or of a party to a suit, for the forgery of a document put forward in course of the trial of that suit, should not be given, without all the testimony available at the trial and bearing on the question of forgery having been first received, and it being satisfactorily proved that there is a *prima facie* case made out for the charge. *Queen—Where a document was not put in evidence, or dealt with as evidence, but merely had a place on the Judge's file, sanction was necessary. SREERAM SAKHO v. SHRO GOTAM SAKHO* . 19 W. R., 183

8. REVOCATION OF SANCTION.

138.—Extent of power of revocation—Criminal Procedure Code (Act V of 1898),

SANCTION FOR PROSECUTION

—continued—

OF THE PETITION OF GURAB SINGH, GUJAR SINGH & DEVI KOSAB
I. L. R., 6 All., 45

145. — Power to grant fresh sanc-

tion.—*After expiry of prior sanction—Grants upon which such fresh sanction should not be granted—Criminal Procedure Code (Act 2 of 1892), s. 195—Sanction was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him*

been commenced more than six months after the date of the sanction, the charge was dismissed. The plaintiff then, on the 20th August 1894 applied for a fresh sanction, which was granted on the 13th April 1895. *Held* that assuming that the Magistrate had granted the fresh sanction had power to do so such unless committal order was given, the Magistrate did not exercise a sound discretion in granting such fresh sanction and consequently his order was set aside. *JORDA SINGH & HANMAN PEE*
I. L. R., 11 Cal., 577

146. — Power to re-try without fresh sanction.—*Where sanction is given for a prosecution for perjury, and the case tried by a competent Court and the conviction quashed or appeal, a competent Court may re-try the prisoner upon the subsisting sanction without any order of the appellate Court by whom the conviction is quashed.* *IN THE MATTER OF THE PETITION OF HANMAN PEE*
I. L. R., 3 Mad., 48

147. — Fresh sanction, Grant of, after expiry of six months from the date of the first sanction.—*Criminal Procedure Code (1892), s. 195—If six months expire after the grant of sanction under s. 195 of the Criminal Procedure Code, and no prosecution is commenced under it within that time, it is not open to the prosecutor to procure a fresh sanction and to institute proceedings upon such fresh sanction.* *The words "six months from the date on which the sanction was given" must be taken to mean six months from the date from which it was given in the first instance, and not the order might have been repeated.* *The Magistrate tried the case out of which the application for sanction was refused to sanction and prosecution, the Magistrate was originally sanctioned the Magistrate who gave the fresh sanction was neither the Magistrate who tried the case nor the Magistrate who sanctioned the*

SANCTION FOR PROSECUTION

—continued—

8 RELOCATION OF SANCTION.—*continued*
I. L. R., 23 Bom., 50

9 EXPIRY OF SANCTION

143. — Prosecution commenced more than six months after granting of sanction, the period intervening being close holidays.—*Fatal Case ss 193 and 471—Criminal Procedure Code (1892), ss 195 and 537—Irregularity in criminal proceedings—Magistrate committed in the course of a judicial proceeding, was granted on the 5th September 1893, and the prosecution was commenced before the Magistrate on the 7th March 1894 the 14th March being a Sunday, and the 5th and 6th Court holidays.* *It was committed to the Sessions.* *Held* that as s 7 of Act 1 of 1901

the proceedings of the Magistrate were without jurisdiction, and the commitment must be quashed. *Held* that s 537 of the Code of Criminal Procedure was not intended to override the provisions of s. 193, nor can it be said that there has not been a failure of justice in the prosecution of a person after the period for which the sanction was in force has expired. *HAN CHANDER MOZUMDAR*
I. L. R., 22 Cal., 176

10 FRESH SANCTION

144. — Necessity for fresh sanction.—*Refrainment of case—Expiry of limitation—Criminal Procedure Code, 1892, s. 195—It is competent for a Court which has granted sanction to a prosecution under s. 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time.* *The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period.* *Held* therefore that a sanction for a prosecution had been granted which sanction to a prosecution had been granted

and the Magistrate, in consequence of the evidence of the Magistrate, had ordered the case to be adjourned for the present, and the complaint, after the six months mentioned in s. 195 of the Criminal Procedure Code, had expired, applied to the Magistrate to re-open the case. *Held* that it was competent for the Magistrate, having once taken cognizance of the case, and it still remaining on his file undetermined, to take it up again at any moment, and proceed with the prosecution, without fresh sanction.

101.

SANCTION FOR PROSECUTION

—continued.

12. WANT OF SANCTION—continued.

153. Institution of case without sanction—Discretion of High Court to interfere—Trial finished without sanction—Where a charge was instituted without the necessary sanction, and the accused was tried and committed, the High Court refused to entitle the accused to the benefit of the exceptions in s. 426 of the Criminal Procedure Code, 1861. *KIRTI OJHA v. RAJAKURAR*.

[7 B. L. R., 29 note

154. Trial without sanction—Criminal Procedure Code, 1882, s. 197—Effect of subsequent sanction—Where, after a magisterial inquiry, a European British subject, being a public servant within the meaning of s. 197 of the Criminal Procedure Code (Act X of 1882), was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions, without any previous sanction having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect. *QUEEN-EMRESS v. MORTON*.

[1 L. R., 9 Bom., 288

155. Criminal Procedure Code, 1882, s. 195—Where a witness was prosecuted for disobedience to a summons without sanction previously obtained under s. 195 of the Criminal Procedure Code, the High Court refused to interfere, there being no evidence that the witness had occasioned a failure of justice. *KARTI MOHUN MOOKERJEE v. EMRESS*. 18 C. L. R., 117

156. Ground for quashing proceedings—Criminal Procedure Code, 1882, ss. 468, 469—*Held* by the Judge making the reference (STRAIGHT, J.), on the case being returned to him, that the accused persons having been prosecuted without the sanction required by ss. 468 and 469 of Act X of 1872, all the proceedings were invalid, and must be quashed, and the accused must be re-tried, sanction to their prosecution having been obtained. *EMRESS v. SABSUKH*.

[1 L. R., 2 All., 533

157. Inquiry and commitment without sanction—Insufficient sanction—Criminal Procedure Code, 1882, ss. 195, 476—Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code,—*Held* that, the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case,

SANCTION FOR PROSECUTION

—continued.

10. FRESH SANCTION—concluded.

prosecution originally. *Semble*—Under these circumstances, it is extremely doubtful whether the sanction was such as is contemplated by s. 195 of the Criminal Procedure Code. *DAKSHIN MANDAR v. JAGOO LAL*. I. L. R., 22 Cal., 573

148. Sanction not acted upon within six months—Criminal Procedure Code (1882), s. 196—Lapse of sanction.—If an order under s. 195 of the Code of Criminal Procedure lapses, not having been acted upon within six months, that does not bar the granting of fresh sanction on the same grounds if a sufficient reason for the delay be shown. *DARWAI ALANDAR v. JAGOO LAL*, I. L. R., 22 Cal., 573, not followed. *Golab Singh v. Debi Prasad*, I. L. R., 6 All., 45, and *Baldeo Singh v. Prasad*, *Weekly Notes*, All. (1892), 245, referred to. *MANGAR RAM v. BHARAT* (1892), 245, referred to.

[1 L. R., 18 All., 358

11. POWER TO QUESTION GRAN 7 OF SANCTION.

149. Power of Deputy Magistrate—Penal Code, ss. 182 and 211—Sanction granted by superior Court.—A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211 of the Penal Code. Whether such sanction has been rightly or wrongly given is a question for the accused to raise before a competent Court. *EMRESS v. IRAD ALTY*. I. L. R., 4 Cal., 809

S. C. NUSIBUNNISSA BIRSE v. IRAD ALTY

[4 C. L. R., 413

150. Power of superior Court—Criminal Procedure Code of 1872, ss. 468, 469—*Rinality of order as to sanction.*—*Held* that the sanction referred to in ss. 463 and 469 of Act X of 1872, when given by any of the Courts empowered under the Act, could not be disturbed by a superior Court. *Per TURNER, C.J., and REASON, O'By.*—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. *BARAKAT-UL-LAH KHAN v. RENNIE*.

[1 L. R., 1 All., 17

12. WANT OF SANCTION.

151. Objection to want of sanction.—*Semble*—The objection to the want of sanction should be taken at the trial. *QUEEN v. KRISTINA KAV*. 7 Mad., 58

152. Jurisdiction of Court without sanction—Trial of offence under Criminal Procedure Code, 1872, s. 468.—A complaint of an offence under s. 468 of the Criminal Procedure Code, 1872, unaccompanied by the requisite sanction, could not be entertained at all by the Magistrate even for the examination of the complainant. *ANONYMOUS*.

[8 Mad., Ap., 2

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SCIRE FACIAS, WRIT OF—

Suit upon writ—Non-judgment of plaintiff—Parties.—Where a *scire facias* was issued under the old Supreme Court procedure at the suit of two, and one of them only said upon it, *Held* that the non-judgment of the other was a ground of non-suit, and that the objection might be taken at any stage. *Issue Chunder Munder v. Heirs of Gopal Ali*. 1 Ind. Jur., N. S., 249

SEA CUSTOMS ACT (VIII OF 1878).

S. 128—Transshipment—Permit— *Like in goods mentioned in permit—A transshipment—Permit—* *Act (VIII of 1878) does not, like a bill of lading, represent the goods mentioned in it, or give any lien upon or control over them.* *Prasanna Thirumaldas v. Madhawa Messrs*. 1 I. L. R., 4 Bom., 447

S. 197 and s. 8—Duty and liability of Customs Collector—Diligence of Superintendent of Customs.—By the negligence of the Superintendent of Customs at the port of C in removing goods to a sea custom warehouse and in keeping them in the warehouse, which, owing to its leaky roof, was utterly unfit for such purpose, the goods were damaged. The owner of the goods sued the Collector of the district, who, under s. 8 of the Sea Customs Act, 1878, has to perform all duties imposed by the Act on a Customs Collector for damages. It was not proved that the Collector was aware of the condition of the warehouse, which had been repaired by the Public Works Department less than a year before. *Held* that the loss was not caused by the neglect or wilful act of the Collector within the meaning of s. 197 of the Sea Customs Act, 1878, and that the Collector was not responsible for the acts of the Superintendent of Sea Customs. *Collector of Godavari v. Issur Kasim Naza*

[I. L. R., 7 Mad., 42]

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[I. L. R., 15 All., 129]

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[I. L. R., 20 Cal., 670]

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[I. L. R., 6 Bom., 698]

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[I. L. R., 16 Bom., 686]

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L. Liability of Secretary of State for acts of public servants—Acts done within scope of his authority—The Secretary of

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 & done within the scope of his authority. SEIN
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The service of Government, if the negligence is such
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SECURITY FOR COSTS—continued.

1. SUITS—continued.

circumstances of each case; and unless it is shown that the exercise of the power is necessary for the reasonable protection of the defendant, the Court ought not to interfere. *Debnath v. Dabhi v. Ashu-tosh Banerjee*, 1 L. R., 17 Cal., 613, approved of. Where the plaintiff in a suit against the executors of a will for the amount of a legacy had, on account of the conduct of the defendants, no alternative but to seek the assistance of the Court, and the defendants stated that the assets were not sufficient to pay all the legacies in full, and it was therefore clear that the suit would have to proceed as an administration suit in which the plaintiff could in no event be liable for the defendant's cost.—*Held* that the Court would not order the plaintiff, although she was not in possession of any immovable property within British India, to give security for the costs of the suit. A plaintiff who is entitled under a will to a beneficial interest in a part of the surplus income derived from immovable property does not become thereby "possessed of immovable property" within the meaning of s. 380. *In the goods of Premchand Moonshree*. *Bidha-Tarai Dassan v. Muttay Lalai Ghose*. [1 L. R., 21 Cal., 832

6. *Plaintiff in another presidency.*—The Court was held to have no power to order a plaintiff resident in another presidency to give security for costs. *Gahan v. Owen*. Cor., 11

7. *Inhabitant of foreign territory.*—When an inhabitant of foreign territory sues within British territory, it is imperative on the Court to demand security from him for the payment of all costs that may be incurred by the defendant in the suit, even though the defendant also is a resident of foreign territory. *Koroonamoyee Debia v. Ooma Churn Deb*. 12 W. R., 465

8. *Plaintiff residing out of jurisdiction.*—Suit for administration.—The provisions of s. 34, Act VIII of 1859, were not intended to apply to a case where the plaintiffs brought a suit for administration and partition of property in which they were entitled to a share, the extent of the share being in dispute. *Russor Lal Day v. Jadbaram Day*. 10 B. L. R., Ap., 25

9. *Civil Procedure Code, 1877, s. 380—"Residence."*—The meaning to be given to the word "residence" in legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The "residence" intended in s. 380 of the Civil Procedure Code (Act X of 1877) is residence under such circumstances as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided. *Manohar Shrinani v. Laxmi Abdulla*. 1 L. R., 3 Bom., 227

10. *Civil Procedure Code (Act XIV of 1882), s. 380—Wadhawan-British India—Residence.*—*Held* that a plaintiff being a resident in Wadhawan in Kathiawar and pos-sessed of immovable property there, could not be required to give security for costs under s. 380 of the

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See Privy Council, Practice or—Sub-PETITION OF APPELLANT.

[1 L. R., 17 Cal., 693

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[1 L. R., 13 Bom., 458

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[5 B. L. R., Ap., 23, 24

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[9 B. L. R., Ap., 17

1 L. R., 2 Ap., 604

1 L. R., 12 Cal., 402

1 L. R., 15 Cal., 497

1 L. R., 16 Cal., 323

See TRUST . . . 1 L. R., 5 Cal., 700

1. SUITS.

1. *Security by plaintiff.*—*Im-movable property.*—*Leasehold pro-erty* is "immovable property" within the meaning of s. 34, Act VIII of 1859. *Uttman v. Jesters of THE PRABHU FOR CALOUTTA*. 7 B. L. R., Ap., 60

2. *Civil Procedure Code (Act XIV of 1882), s. 380—Suit by female.*—The Court has a discretion in exercising the powers conferred by s. 380, Civil Procedure Code, and it will not order the plaintiff to give security unless grounds are shown tending to show that the defence is true. *SHAMA SUNDARY DASSAN v. BASH BEHAR DUTT*

3. *In fact female plaintiff or next friend.*—*Civil Procedure Code (Act XIV of 1882), s. 380—Practice.*—Unless in exceptional cases, neither an infant female plaintiff nor her next friend ought to be required to give security for costs. *Bai Porebai v. Devaji Mughni*

4. *Practice—Suit for money.*—*Civil Procedure Code (Act XIV of 1882), s. 380; (Act VI of 1888), s. 5.*—A suit to recover certain specified articles and money alleged to have been wrongfully seized and taken possession of by the defendant, or to recover the value thereof, is a suit for money within the terms of the second para-graph of s. 380 of the Civil Procedure Code, the term "suit for money" as there used being wider than a suit for debts. Circumstances under which the Court will order security for costs to be given by a female plaintiff in such a suit. *DEGUMABAI DEBI v. ATSHOOTOSH BANERJEE*. 1 L. R., 17 Cal., 610

5. *Civil Procedure Code (1882), s. 380—Suit for amount of legacy under will.*—*Suit in nature of administration suit.*—*Discerion of Court.*—*Consent of Statutes.*—*"May."*—*"Shall."*—The power given to the Court under s. 380 of the Civil Procedure Code to order security for costs is discretionary, and one which the Court ought, or ought not, to exercise according to the

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1. SUITS—continued.

Civil Procedure Code (Act XIV of 1859), Washman being within the limits of British India. THIRAVAN KANCHAND & DONAT, HANOVER, AND CENTRAL INDIA RAILWAY COMPANY L. T. R., 8 Bom., 344

11. *Civil Procedure*
MIRZA & ABDUL MIRZA L. T. R., 21 Cal., 177

12. *Security where plaintiff has left the country*—Where a plaintiff leaves the country before the case is decided, the proper course for the defendant is to apply to the Court to take security for costs before the case is decided, and if no security be furnished, the Court will pass judgment against the plaintiff by default. But if the defendant allows the case to go to judgment, the Court on appeal cannot pass any order calling for security for the costs of the lower Court, which must be left to be realized in execution. IN THE MATTER OF THE PETITION OF CALCUTTA AND SOUTH-EASTERN RAILWAY COMPANY W. H. R., 217

13. *Suit to enforce trust under a will*—Want of personal interest.—In

16 Q. L. R., 68

16. *Security by appellant*—Power of single Judge of High Court to make order for

2. APPEALS.
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16. *Security by appellant*—Power of single Judge of High Court to make order for

16. *Security by appellant*—Power of single Judge of High Court to make order for

16. *Security by appellant*—Power of single Judge of High Court to make order for

16. *Security by appellant*—Power of single Judge of High Court to make order for

SECURITY FOR COSTS—continued.

2. APPEALS—continued.

costs of an appeal, that when an appellant resides within the jurisdiction of the Court, he is amenable to its orders as to the costs of an appeal; and that an appellant who has no available property may, if required, give security for the costs of an appeal before proceeding with it. MOHOMUD DOSA & KUNOOP L. T. R., 170

17. *Appeal from order of Commissioner of Insolvent Court*—Civil Procedure Code, 1859, s. 342—S 342 of Act VIII of 1859 did not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. IN THE MATTER OF HANSEMAN MISHRA

18. *Discretion of Judge*
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exercised, and such discretion is not so exercised when

19. *Notice of order for security*—The issue of a preliminary notice for security for the costs of appeal is not equivalent to a demand, and, if the order to furnish security is made in the absence of the appellant, the order must be communicated to him before he can be held to have disobeyed it. TINKU & DAVA HAI

20. *Civil Procedure*
Code, 1859, s. 342—Circumstances under which an order may be made requiring security for costs of appeal to be deposited under s. 342 of Act VIII

21. *Civil Procedure*
Code, 1859, s. 342, 343, 346—Lawyer appellant.—By the words "before the appellant is called upon to appear and answer" in s. 342, as compared with similar words used in subsequent sections, especially in the notice, but the date on which the appeal is called on to be heard, and the Court has a discretion

22. *Civil Procedure*
Code, 1859, s. 342, 343, 346—Lawyer appellant.—By the words "before the appellant is called upon to appear and answer" in s. 342, as compared with similar words used in subsequent sections, especially in the notice, but the date on which the appeal is called on to be heard, and the Court has a discretion

23. *Civil Procedure*
Code, 1859, s. 342, 343, 346—Lawyer appellant.—By the words "before the appellant is called upon to appear and answer" in s. 342, as compared with similar words used in subsequent sections, especially in the notice, but the date on which the appeal is called on to be heard, and the Court has a discretion

24. *Civil Procedure*
Code, 1859, s. 342, 343, 346—Lawyer appellant.—By the words "before the appellant is called upon to appear and answer" in s. 342, as compared with similar words used in subsequent sections, especially in the notice, but the date on which the appeal is called on to be heard, and the Court has a discretion

25. *Civil Procedure*
Code, 1859, s. 342, 343, 346—Lawyer appellant.—By the words "before the appellant is called upon to appear and answer" in s. 342, as compared with similar words used in subsequent sections, especially in the notice, but the date on which the appeal is called on to be heard, and the Court has a discretion

SECURITY FOR COSTS—continued.

2. APPEALS—continued.

plaintiff.—Under s. 342, Act VIII of 1859, the High Court had discretion to demand security for costs from an appellant, if it saw fit to do so, at any time before the hearing of the appeal. Where an assignee who had been substituted for the plaintiff under s. 106 declined to furnish security for the costs within such reasonable time as the Court ordered, it was held that the defendant might within eight days after such neglect or refusal plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit. *HEAVAT SEAT v. CABAYER*. 13 W. R., 431

28. *Appellant out of jurisdiction.*—*Quære*—Whether in a case in which the appellant is not residing out of the British territories in India, the High Court has authority to demand security for costs from the appellant after the issue of summons, i.e. notice of the appeal. *HUPAZVITTOOLAH CHOWDARY v. HUNDREDDA RAO*. 8 W. R., M.S., 123.

29. — Beng. Reg. XIV of 1829, s. 2, cl. 1—Inhabitant of foreign territory.

[illegible]

security be so furnished, the suit of such person, if plaintiff, should not be proceeded with or appeal admitted unless he had furnished the necessary security to cover costs in the appeal. In an appeal to the Sudder Court from a decree of the Zillah Court

by a party then temporarily absent in England, but having real estates and factories within the jurisdiction of the Court, no security was furnished by the appellant's vakil within six weeks after lodging the appeal. The respondent in the first instance put in

Regulation XIV of 1839, s. 2, cl. 1, contending that for non-compliance with the requirements of Bengal

that such security ought to have been furnished by the appellant, who, residing in England pending life,

within the meaning of the regulation, and dismissed the appeal. *Heid* by the Judicial Committee (remitting the suit to India for trial) that the Sudder Court had by Regulation XIV of 1829, any power ex mero

[illegible]

occurred, the regulation providing only that a suit should be proceeded with until security was furnished. *Seemle*—The putting in an answer to the complaint before objecting to the want of security for costs was waived as a matter by the respondent of the want of

1829, s. 2, cl. 1. *Quare*—Whether Act III of

SECURITY FOR COSTS—continued.

2. APPEALS—continued.

Procedure Code, 1882, s. 549.—S. 549 of the Civil Procedure Code was never intended by the Legislature to derogate from the right of appeal given by the law to every person who is defeated in a suit on the Court of first instance and an appealable decree.

Maneckji

Limyancherji v. Goolbar, I. L. R., 3 Bom., 241,
followed. - *Ross v. Jagers*, 8 M. J. 13; *Seshay-*
lawar v. Jambhavadan, I. L. R., 3 Mad., 66; and
Legender Deb Roykut v. Eundro Deb Roykut,
S. W. R., 102, referred to. *LAKEHUI CHAND* n

23. _____ Grounds for
Order for security—Civil Procedure Code, 1882,
549—Poverty of appellant.—Held by the Full
BENGE, J.

3000 (TARRANT, J., *undivulgate*), without laying down any general rule by which the exercise of the discretion conferred by s. 549 of the Civil Procedure Code should be governed, that the mere fact of the poverty of an appellant, standing by itself and without

reference to any general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs. JIVAN ALI BEG v. BASA MALI

24. Code (Act XIV of 1882), s. 549—Power of
Civil Procedure

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25. *Civil Procedure Code*, 1882, s. 549—Poverty of appellant—Vexatious conduct—Ground for requiring security.—Appellant (residing within the jurisdiction) who has been ordered to pay the costs of the original hearing

[illegible]

26. _____
out. His not paying, if it be caused by inability
) pay, is not vexatious. AHMED BIN ESSA KATIRRA
, ESSA BIN KATIRRA I. L. R., 13 Bom., 458
Civil Procedure

244, granting execution—Appellant required to pay the costs of the appeal and of the original writ.—The Court can require an appellant

om an order made under s. 214 of the Civil Procedure Code (Act XIV of 1882) in execution of a decree (give security for the costs of the appeal and of the original suit. DADU JIJIYAD v. CHANDRABHAN [I. L. R., 24 Bom., 314

27. Civil Procedure—Assignee substituted for
ode, 1859, ss. 106, 342—

SECURITY FOR COSTS—concluded.

2. APPEALS—concluded.

40. *Form and contents of order for security for costs—Omission to state amount—Practice—Civil Procedure Code (1882), s. 549.—Where a Court acting under s. 549 of the Code orders an appellant to give security for costs, it is not necessary that any specific sum for which security is to be given should be named in the order for security. It is sufficient for the order to direct the appellant to furnish security within a time to be stated "for the costs of the appeal" or "for the costs of the original suit," or "for the costs of the appeal and of the original suit." *Thakur Das v. Kishori, I. L. R., 9 All., 164*, overruled on this point. *Lekha v. Bhavna**

[I. L. R., 18 All., 101.]

SECURITY FOR GOOD BEHAVIOUR.

See Appeal in Criminal Cases—Criminal Procedure Codes.

[I. L. R., 9 Cal., 878
22 W. R., Cr., 68
3 N. W., 126
I. L. R., 1 All., 666]

See SENTENCE—IMPRISONMENT—IMPEACHMENT GENERALLY.

[3 N. W., 126
I. L. R., 1 All., 666]

1. *Transfer of proceedings—Criminal Procedure Code (1882), ss. 110 and 526.—Proceedings under s. 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the district within which such proceedings have been lawfully instituted. In the latter of the parties of a suit, the appellant is not to be named in the order for security for costs, it is not necessary that any specific sum for which security is to be given should be named in the order for security. It is sufficient for the order to direct the appellant to furnish security within a time to be stated "for the costs of the appeal" or "for the costs of the original suit," or "for the costs of the appeal and of the original suit." *Thakur Das v. Kishori, I. L. R., 9 All., 164*, overruled on this point. *Lekha v. Bhavna**

[I. L. R., 18 All., 101.]

2. *Discretion of Court, Exercise of—Criminal Procedure Code, 1872, ss. 505, 506—Deposit of cash in lieu of security bond for good behaviour.—The powers given by ss. 505 and 506 of Act X of 1872 should be exercised with extreme discretion: the former of those sections was not intended to apply to persons of "by no means a reputable character." *Burress v. Kala Chand Das**

[I. L. R., 6 Cal., 14: 6 C. L. R., 128]

3. *Person of violent or turbulent character—Criminal Procedure Code, 1861, s. 297.—S. 297 of the Code of Criminal Procedure, 1861, did not refer to persons of a violent or turbulent character. In *RE NABAL SOOPOODHI**

[6 W. R., Cr., 6]

4. *Persons convicted of theft—Criminal Procedure Code, 1861, s. 295—Theft—S. 295 did not apply to persons convicted and punished for theft. *Queen v. Kurnar Sohar**

[7 W. R., Cr., 57]

5. *Habitual offenders—Acts committed by persons in performance of duties as burkandazes in zamindari—Habitual association—Joint trial—Code of Criminal Procedure (Act V of 1898), ss. 110, 112, 117, 118, and 537.—Certain burkandazes employed at the kitchenery of the Bijnai estate, who were alleged to have committed acts of extortion and other acts of oppression in the perform-*

SECURITY FOR COSTS—continued.

2. APPEALS—continued.

37. *Extension of time for furnishing security—Exceptional circumstances—Civil Procedure Code (1882), s. 549.—The appellant applied for an extension of the time for giving security for the costs of the appeal on the ground that, in the exceptional state of things in Bombay caused by the prevalence of the plague, she had been unable to raise the money required. *Held* that under the circumstances the application should be granted. S. 549 of the Civil Procedure Code (Act XI of 1882) does not absolutely preclude such an order if the circumstances render it just to make it. The Court cannot lay down a hard-and-fast rule that in no case after the time for giving security has expired can an appellant be allowed further time. *Jumabai v. Vissondas Kuttochond**

[I. L. R., 21 Bom., 576]

38. *Agreement to deposit security—Failure to make deposit.—An order was made by the Court (pursuant to an agreement between the parties after a decree for the plaintiff) that the defendant who had appealed should pay into Court, to the credit of the cause, a certain sum of money for decree, costs, etc., including a sum of money for costs to be incurred on appeal. On an application by the plaintiff that the case be struck off for default of deposit, and that the defendant pay costs already incurred at the time of the application, it was ordered that the defendant should deposit a sum to cover costs of the future appeal, and in default that the case should be struck off, although the summons to show cause was not in point of form to that effect. *Eliaz v. Chokkerbavay**

[I. Ind. Jur., N. S., 223]

39. *Civil Procedure Code, s. 549—Security for costs—Amount of security not fixed—Dismissal of appeal—Practice.—S. 549 of the Civil Procedure Code contemplates an order by which some ascertained amount of security is required. The last paragraph of the section seems to contemplate that, on failure to furnish security within the time fixed, an order for rejecting the appeal should be obtained from the Court that gave the order to furnish security. Upon the application of the respondent in a second appeal pending before the High Court, an order was passed requiring the appellant to furnish security for the costs of the appeal, and to lodge such security at any time before the hearing. This order purported to be made under s. 549 of the Civil Procedure Code, but neither the application nor the order stated the amount of the security required. At the hearing of the appeal, no security having been lodged, the respondent objected that, with reference to the terms of s. 549, the Court had no option but to dismiss the appeal. *Held* that the objection had no force, no such order as contemplated by s. 549 having been made. *Held* also that the proper course was to have applied to the Judge who passed the order for security, at any time before the case came on for hearing, for the rejection of the appeal, and that it was too late at the hearing to ask the Court to reject the appeal. *Thakur Das v. Kishori Lai**

[I. L. R., 9 All., 164]

SECURITY FOR GOOD BEHAVIOUR

8. Absconded offender arrested without summons—*Criminal Procedure Code, 1861, s. 306*—Where an accused person was arrested as an absconded offender, and, without evidence being gone into on that charge, an inquiry was made into his character, without any summons being issued under s. 306 of the Criminal Procedure Code, such proceedings were held to be irregular. *Queen v. Hutton, 3 N. W. 3*

9. Opportunity to make defence—*Information of accusation to accused—Criminal Procedure Code (Act X of 1852), ss. 109, 110, 112*—Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet. *Queen v. Chandra Sen, 11 Cal. 13*

10. Right to be heard by pleader—*Accused person liable to imprisonment under s. 123 of the Code of Criminal Procedure, 1861*

11. Magistrates for order of giving security. *MAHAT LAL JHA v. QUEEN-KUMAR, 1 I. L. R., 27 Cal., 666*

12. Information on which Magistrate may act—*Information showing a breach of the peace is immaterial—Order to furnish security for good behaviour for three years—Arrest of accused—Inquiry as to truth of information—Proof of information—Statements of persons not called as witnesses—Criminal Procedure Code, 1861, ss. 112, 114, 117*—Conversations out of Court with persons, however respectable, are not legal or proper material upon which Magistrate should adopt proceedings under s. 107 or s. 110 of the Criminal Procedure Code. The information to be required by a Magistrate, before issuing an order under s. 112, may to some extent be of a hearsay and general description, but when the party to whom the order is directed appears in Court in obedience thereto, the inquiry must be conducted on the issues laid down in s. 112. It is not because a man has a bad character that he is therefore necessarily liable to be called upon for securities of the peace or for good behaviour.

SECURITY FOR GOOD BEHAVIOUR

—continued.

mission of offences involving a breach of the peace.

aiding that there was habitual association between these persons in regard to the first and second rounds, there certainly could be no such connection between them in regard to their characters so as to make them dangerous persons and thus to render their being at large without security hazardous to the community, and that proceedings should have been separately.

and not for the punishment of offences. *MAHAT LAL JHA v. QUEEN-KUMAR, 1 I. L. R., 27 Cal., 781*

13. *MAHAT LAL JHA v. QUEEN-KUMAR, 4 C. W. N., 631*

14. Jurisdiction of Magistrate—*Person not residing within his jurisdiction—Revision—Code of Criminal Procedure (Act V of 1893), s. 110*—It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is found to be a person of the description given in s. 110 of the Code of Criminal Procedure, that the Magistrate can take action under that section, and it is not contemplated that the Magistrate in such a case should issue a warrant so as to pursue the person concerned into another jurisdiction. Under the terms of s. 110 of the Criminal Procedure Code, the reputation of that person in the neighbourhood in which he resides. *MAHAT LAL JHA v. QUEEN-KUMAR, 1 I. L. R., 27 Cal., 683*

7. Persons not proved to have committed crime—*Criminal Procedure Code, 1861, s. 605*—The criteria of the power given by s. 605 of the Criminal Procedure Code was not confined to cases in which positive evidence of the commission of crime is forthcoming against the persons charged. *IN RE PANDA SIVA KUMAR, 1 I. L. R., 3 Mad., 238*

SECURITY FOR GOOD BEHAVIOUR

—continued.

ss. 107 and 112 of the Criminal Procedure Code, requiring any person to "show cause" why he should not be ordered to furnish security for keeping the peace, is not in the nature of a rule nisi implying that the burden of proving innocence is upon such person. The onus of proof lies upon the prosecution to establish circumstances justifying the action of the Magistrate in calling upon persons to furnish security. *Dunne v. Hem Chander Chowdhury*, 4 B. L. R., 46, and *Queen v. Nirrunji Singh*, 3 N. W., 431, referred to. Where, according to the nature of the information received by the Magistrate, there were two opposing parties inclined to commit a breach of the peace, —*Held*, applying by analogy the principles relating to the trial of members of opposing factions engaged in a riot, that the Magistrate acted irregularly in taking steps against both parties jointly and in holding the inquiry in a single proceeding. Such a proceeding is not *ipso facto* null and void, but only where the accused have been prejudiced by it. *Empress v. Lachan, Weekly Notes*, All., 1851, p. 23, and *Hossain Buxsh v. Empress*, 1 L. R., 6 Cal., 96, referred to. In proceedings instituted under s. 107 of the Criminal Procedure Code against more persons than one, it is essential for the prosecution to establish what each individual so implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace. In holding such an inquiry it is improper to treat what is evidence against one of such persons as evidence against all, without discriminating between the cases of the various persons implicated. *Queen-Empress v. Nalin, I. L. R., 6 All. 214*, referred to. Although in an inquiry under s. 117 the nature or quantum of evidence need not be so conclusive as in trials for offences, the Magistrate should not proceed purely upon an apprehension of a breach of peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts against each person implicated, which would lead to the conclusion that an order for furnishing security is necessary. What the nature of the facts should be depends upon the circumstances of each case, but where the nature of the Magistrate's information requires it, overt acts must be proved before an order under s. 118 can be made, and such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace. *Queen v. Abdool Huj, 20 W. R., Cr., 57; Goshain Luchman Pershad Poorie v. Polloop Narain Poorie, 24 W. R., Cr., 30; Rajah Rani Bahadoor v. Ranee Tillessee Koor, 22 W. R., Cr., 79; and In the matter of Kasbi Chander Dos, 10 B. L. R., 441: 9 W. R., Cr., 47*, referred to. *Queen-Empress v. Abdol Kadir, I. L. R., 9 All., 452*

15. Ground for ordering security.—Criminal Procedure Code, 1872, s. 505.—Evidence of character.—Act X of 1872, s. 505, enabled the Magistrate to require security for good behaviour, whenever it appeared to him, from the evidence as to general character adduced before him or that any person was by reputation a robber, house-breaker or thief, or a receiver of stolen property, knowing the

ITY FOR GOOD BEHAVIOUR

—continued.

not be satisfactory evidence in the one case as done something, or taken some step, that an intention to break the peace or that is occasion a breach of the peace; and in the he is within the category of persons mentioned s. 110, the determination of which question may be guided by the considerations pointed out in *Empress v. Nalin, I. L. R., 2 All., 835*. A person is not competent, upon information that the likelihood of a breach of the peace, and s. 110 of the Criminal Procedure Code, and either *ultra vires* for him to demand security in such a case. In ordering the person under s. 114 of the Criminal Procedure Code, the Magistrate must act on recorded information; it is not enough for him to express a reason to fear the commission of a breach of the peace, but "that such breach of the peace prevented otherwise than by the immediate such person." *Empress v. Barva*

[I. L. R., 6 All., 132

Criminal Procedure Code, s. 306.—Information of police.—1861, s. 306 of the Code of Criminal Procedure, as to proceedings against persons required security for good behaviour, a Magistrate had to use the information which the police obtained as evidence in the case. *Queen v. Krishan, 11 W. R., Cr., 35*

"Show cause"—Criminal Procedure Code, ss. 107, 112, 117, 118, 239.—Burden of joint inquiry.—*Nature and quantum of the proceeding—*Before passing order for security, the absence of exceptional authority contrary to the law to the contrary effect, when the judicially either to forfeit his liberty, his liberty qualified, to insist that his case be separated from the cases of other persons separately. Where an order has been made under s. 107 of the Criminal Procedure Code, more persons than one to show cause should not severally furnish security for the peace, the provisions of s. 239 read with applicable, subject to such modifications as section indicates, and to such procedure as applies to each individual case may render admissible the interests of justice. A joint inquiry in such persons is therefore not *ipso facto* taken by the Magistrate under ss. 107, and 118 improperly deals with more persons than one, the matter must be considered upon dual merits of the particular case, and would amount to an irregularity which, according to particular circumstances, might or might not be considered by the provisions of s. 537. *Queen v. Nalin, I. L. R., 6 All., 214*, and *Empress v. Nalin, Weekly Notes*, All., 1884, p. 51, referred to. An order passed by a Magistrate under

SECURITY FOR GOOD BEHAVIOUR —continued.

25. ——— Statement of grounds for order—*Opportunity to comply with order—Criminal Procedure Code, 1872, s. 505.*—On a requisition from the High Court, a Magistrate is bound to state the grounds upon which he fixed the amount of security. A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security. *EMPRESS v. DEDAR SINGAR*
[I. L. R., 2 Calc., 384; 1 C. L. R., 95]

26. ——— Order for surety to pledge rights in land—*Illegal order.*—An order by a Magistrate requiring security for good behaviour which directed that the surety should pledge all his proprietary rights in land worth Rs200 was held to be illegal. *QUEEN v. GANNI* . . . 7 N. W., 249

27. ——— Reference to Sessions Judge for confirmation of order when person is unable to give security—*Criminal Procedure Code (Act V of 1898), ss. 110, 123—Statement of grounds for order.*—The Sessions Judge, in confirming the order of a Magistrate under s. 123 of the Code of Criminal Procedure in regard to the imprisonment of a person in consequence of his being unable to furnish the necessary security, is bound to find a special ground on which the order is passed, having special reference to s. 110 of that Code. It is not sufficient where he only finds in general terms that it is for the interests of the community at large that such person should be bound once to be of good behaviour. *NAKHI LAL JHA v. QUEEN-EMPRESS*

[I. L. R., 27 Calc., 656]

28. ——— Order with arbitrary condition imposed — *Criminal Procedure Code, 1872, ss. 505, 516—Sureties.*—In making an order for security to keep the peace under s. 505, Criminal Procedure Code, 1872, a Magistrate had no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law; e.g., a condition requiring the accused to furnish two sureties, being persons of respectability and substance, not related to him, and residing within one mile of his house. The ground on which a Magistrate has power to refuse to accept any surety under s. 516 must be a valid and reasonable ground. *IN THE MATTER OF THE PETITION OF NARAIN SOOBODDHEE*

[22 W. R., Cr., 37]

29. ——— No conditions and limitations can be imposed upon persons ordered to give security under s. 118 of the Code. *IN THE MATTER OF JHOJHA SINGH v. QUEEN-EMPRESS*

[I. L. R., 24 Calc., 155]

30. ——— Ground for refusing surety — *Criminal Procedure Code (Act V of 1898), s. 123, cl. (2)—Pleader whether he may be heard in a reference under that section.*—A Sessions Judge is bound to hear a pleader who may appeal on behalf of a person in a case referred to him under s. 123, cl. (2), of the Criminal Procedure Code. *Jhoja Singh v. Queen-Empress, I. L. R., 23 Calc., 493*, referred to. A Magistrate cannot refuse to accept a surety on the

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ground that he lives at a distance from the accused. *AMINASH MALAKAR v. EMPRESS 4 C. W. N., 797*

31. ——— Object of demanding security—*Criminal Procedure Code (Act X of 1882), ss. 110 et seq.—Discretion of Magistrate in accepting or refusing sureties tendered.*—The object of requiring security to be of good behaviour is not to obtain money for the Crown by the forfeiture of recognizances, but to insure that the particular accused person shall be of good behaviour for the time mentioned in the order. It is therefore reasonable to expect and require that the sureties to be tendered should not be sureties from such a distance as would make it unlikely that they would exercise any control over the man for whom they were willing to stand surety. *In the matter of the petition of Narain Sooboddhee, 22 W. R., Cr., 37*, not followed. *QUEEN-EMPRESS v. RAHIM BAKSHI*

[I. L. R., 20 All., 206]

32. ——— Order for security and imprisonment in default—*Illegal order—Criminal Procedure Code, 1861, ss. 296, 301.*—Where a Magistrate required security from persons for their good behaviour, under s. 296 of the Criminal Procedure Code, and in default sentenced them to six months' rigorous imprisonment,—*Held* that the order was illegal, s. 301 requiring that they should be committed to prison until they furnish the security demanded. In fixing the amount of security, the Magistrate should not go beyond a sum for which there is a fair probability of the defendants being able to find security. *ANONYMOUS*

[4 Mad., Ap., 47]

33. ——— *Criminal Procedure Code (Act X of 1882), s. 118—High Court's power of interference when the amount of security is excessive—Magistrate's discretion, Exercise of.*—A Magistrate ordered the accused to execute a bond for Rs500 for his good behaviour for one year and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to prison. The High Court, being of opinion that the amount of the required security was excessive and that the Magistrate had not exercised a proper discretion in the matter, interfered in the exercise of its revisional jurisdiction, and reduced the amount. *QUEEN-EMPRESS v. RAMA*
[I. L. R., 16 Bom., 372]

34. ——— Power of Magistrate to cancel security-bond once accepted—*Criminal Procedure Code (Act X of 1882), ss. 109, 122, 125.*—When a surety offered by a person for good behaviour has once been accepted, a Magistrate has no power subsequently to cancel the security-bond, though he might be of opinion that such surety is an unfit person. *EMPRESS v. RAM LAL ACHARJEA*
[C. W. N., 394]

35. ——— Second order for security without further proof—*Criminal Procedure Code, 1861, Ch. XIX.*—Where a person is confined, in default of giving security for his good behaviour, under Ch. XIX of the Code of Criminal Procedure,

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—continued.

■ second security cannot be demanded after the expiration of the first term of confinement, except on some new proof of bad livelihood, or that the person is not capable of following an honest calling. *IN RE JUS WUNT SINGH*

[1 Ind. Jur., N. S., 301; 6 W. R., Cr., 18]

See *MAHOMED ABDUL BARI v. EMPRESS*

[4 C. W. N., 121]

38. ———— Further proceedings under s. 110 of Code of Criminal Procedure—*Fresh information—Accused person—“Discharge”—Criminal Procedure Code, s. 437.—A further inquiry*

of the Code clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch. XIX of the Code. *QUEEN v. EMPRESS v. IMAN MUNDAL*

[L. L. R., 27 Cal., 862]

37. ———— Form of security bond—*Criminal Procedure Code, 1861, s. 805, 306—Forfeiture of bond—Where sureties who were required to show cause, under s. 305 of the Code of Criminal*

pieces of paper instead of one. *IN THE MATTER OF THE PETITION OF BRINDABAN CHANDER DASS IN THE MATTER OF THE PETITION OF TARJEE CHURN MOZOOMDAR*

19 W. R., Cr., 29

38. ———— Procedure—*Power of Sessions Judge after acquittal—Information to Magistrate as to taking security from accused—If a Sessions Judge be of opinion*

the party is in custody to the Magistrate. *REG v. BYNA VALAD SINGH*

1 Bom., 91

39. ———— Suspicion—*Pro- duction of witness—Bail—A person against whom proceedings for bad livelihood have been taken is entitled to have embodied in a charge the precise matter which the Magistrate considers established by evidence against him. It is not sufficient to say generally that there is suspicion. He should be*

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—continued

asked to produce his witnesses or offered assistance

40. ———— *Criminal Procedure Code, 1861, s. 296—Examination of witnesses.—In proceedings taken against a person to obtain security for good behaviour under s. 296 of the Criminal Procedure Code, the examination of the witnesses must be taken in the presence of the accused person, who should be permitted to cross examine them. QUEEN v. SHUNKUR*

2 N. W., 408

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[2 B. L. R., A. Cr., 7 note; 10 W. R., Cr., 1]

MACHAN MIRA v. CHAYMAN TELI

[2 B. L. R., A. Cr., 7; 10 W. R., 48]

41. ———— Opportunity to accused of cross examining witnesses and calling witnesses—*In an inquiry under Ch. XIX of the*

42. ———— *Evidence—Pre- vious trial for dacoity—Criminal Procedure Code, 1861, s. 296—Where a person was adjudicated to be a person of notorious bad character, under s. 296,*

[13 W. R., Cr., 24]

43. ———— *Criminal Procedure Code (1852), ss. 113 and 123—Power of Sessions Judge to remand—Taking further evidence—Conditions and limitations imposed upon persons required to give security—Under s. 123 of the Criminal Procedure Code, a Sessions Judge is not competent to remand a case for further inquiry. Such evidence as he may require he must take himself. IN THE MATTER OF JHOJHA SINGH v. QUEEN EMPRESS*

L. L. R., 24 Cal., 155

44. ———— *Criminal Procedure Code (1852), ss. 110 and 117—Transfer of criminal case—Criminal Procedure Code, s. 526—Where a Magistrate instituting proceedings against a person under s. 110 of the Code of Criminal Procedure has “acted” within the meaning of s. 117 of the Code, no order can be made subsequently under s. 526 of the Code transferring the case from his Court. IN THE MATTER OF THE PETITION OF GURDAS SINGH*

L. L. R., 19 All., 291

45. ———— *Sentence of imprisonment—Criminal Procedure Code, 1861, s. 296—Illegal direction.—A direction annexed to a sentence of imprisonment, under s. 443 of the Penal Code, that the convict be brought up at the expiration of*

SECURITY FOR GOOD BEHAVIOUR*—concluded.*

the sentence, in order that he may give security for good behaviour for the period of one year, reversed, as not being authorized by s. 296 of the Criminal Procedure Code. *REG. v. KRISHNAJI BAPUJI GAIKAVAD* 3 Bom., Cr., 39

46. *Criminal Procedure Code (1882), ss. 118, 121, 514, sch. V, form No. XLVI—Security for good behaviour—Conviction of principal—Forfeiture of bond—Mode of proving conviction.*—Where a person has given a security-bond under s. 118 of the Code of Criminal Procedure for the good behaviour of another, and the principal during the term for which the bond is in force is convicted of an offence punishable with imprisonment, the production of the conviction, and, if necessary, of proof of identity of the principle is sufficient evidence upon which the Magistrate is authorized to issue notice to the surety under s. 514 of the Code to show cause why the penalty of the bond should not be paid. In such a case it is for the surety to show what cause he can. It is not incumbent on the Magistrate to re-summon the witnesses on whose evidence the principal was convicted and practically to re-try the case against the principal. *QUEEN-EMPRESS v. MAN MOHAN LAL*

[I. L. R., 21 All., 86]

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5 Mad., Ap., 2

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6 Mad., Ap., 23

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7 Bom., Cr., 31

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1 GENERAL CASES

1. ——— Obligation to pass sentence on conviction—*Duty of Magistrate*—Where a Magistrate convicts a person of an offence, he is bound to pass some sentence if only a nominal one.
Anonymous 4 Mad, Ap, 66

2. ——— The law gives no discretion to a Court which convicts of an offence to award or not the punishment provided for that offence in the Penal Code.
DEWAN SINGH v. QUEEN EMPRESS I L R, 23 Cal, 805

3. ——— Principals and abettors—*Abettor of same offence committed as principal*—Persons punished as principals cannot also be punished for abetment of the same offence.
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5. ——— Ground for passing lighter sentence—*Difference between opinions of Judge and jury*—A difference of opinion between the

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Judge and the jury is no ground for the Judge passing a lighter sentence than he would otherwise have done (*Per JACKSON J*)
QUEEN v. GHOLAM MUSTUFFA W W R, Cr, 29

6. ——— Ground for mitigation of sentence—*False evidence*—Discussion as to the extent of punishment to be passed on certain rayats who in a case of criminal trespass brought by an indigo planter, falsely swore that cotton and not indigo had been sown.

[8 W. R., Cr, 7]

7. ——— Punishment for escape from custody—*Penal Code s. 221—Additional punishment*—The punishment for escape from lawful custody (s. 24) in a case in which that is one of the offences of which the prisoner is convicted must be 'in addition' to any punishment awarded for the substantive offence.
QUEEN v. DHOOVDA BHOOLA [8 W. R., Cr, 85]

8. ——— False evidence—*Simple misstatement*—A deliberate misstatement made in a Court of justice, whether it tends to endanger the life and property of others or to defeat and impede the progress of justice, is not an offence which should be lightly passed over, but for a simple misstatement from which no such inferences can be drawn a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court.
QUEEN v. GURMOO ANZEN 7 W. R., Cr, 37

9. ——— Voluntarily causing hurt—*Sentence by Subordinate Magistrate—Causing grievous hurt*—Where a District Magistrate an

order of the District Magistrate and restored the conviction and sentence of the Subordinate Magistrate.
REG v. HANMAPA DEVI MALAPA [7 Bom, Cr, 37]

10. ———
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11. ——— Kidnapping—*Maximum sentence*—The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature.
QUEEN v. BHOODHRA 8 W. R., Cr, 3

SENTENCE—continued.

1. GENERAL CASES—continued.

12. ———— *Measure of punishment—Murder—Severity of sentence, Mitigation of.*—Where a prisoner convicted of murder against the opinion of the assessors was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code and on the necessity of administering it to us to make it apply to the various gradations and degrees of crime in this country. *QUEEN v. HOSSAIN ALI* . . . 7 W. R., Cr., 47

13. ———— *Rape—Circumstances for consideration.*—The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female. *QUEEN v. JHANTAN NOSHIO* [6 W. R., Cr., 59]

14. ———— *Rioting with deadly weapons.*—In a case of rioting with deadly weapons, the one side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side. *QUEEN v. MOORUT MAHTON* . . . 8 W. R., Cr., 3

15. ———— *Rioting and unlawful assembly—Affray.*—Where the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out. *QUEEN v. PHOOLLEN MISSER* . . . 12 W. R., Cr., 72

16. ———— *Sentence on alternative finding—Penal Code, s. 72.*—An alternative finding is perfectly legal. The sentence should be as provided by s. 72, Penal Code. *QUEEN v. TARINEE MYTEE* . . . 7 W. R., Cr., 13

17. ———— *Contemporaneous sentences.*—Contemporaneous sentences are not justified by the Penal Code. *QUEEN v. MOHESH CHUNDER SIRCAR* . . . 3 W. R., Cr., 13

18. ———— *Sentence under Penal Code and under special law.*—A sentence under the Penal Code and also under a special law in respect of one and the same offence is illegal. *QUEEN v. HUSSUN ALI* . . . 5 N. W., 49

19. ———— *Simultaneous conviction for offence, and order for security for good behaviour.*—When a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound. *QUEEN v. SHONA DAGRE* [24 W. R., Cr., 13]

20. ———— *Sentence running from period prior to conviction—Illegal sentence.*—

SENTENCE—continued.

1. GENERAL CASES—continued.

A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction. *QUEEN v. BUL SINGH* . . . 4 N. W., 8

21. ———— *Commencement of sentence where appeal is brought—Date of committal to jail.*—Where on the appeal of Government an order of acquittal is set aside and sentence passed, that sentence will commence to run from the date of the committal of the accused to jail, and not from the date of their arrest or of the sentence on the appeal. *EMPERESS v. MAHUDDI* . . . 8 C. L. R., 349

22. ———— *Sentence to commence at future date—Conviction, and admission to bail to give means of appeal.*—Where a Magistrate, after sentencing two prisoners to separate terms of imprisonment, admitted them to bail, in order that they might have the means of appealing,—Held that such admission to bail did not make the previous sentence one to commence at a future time, and consequently illegal. The case of *Kishen Chunder Bhattacharjee*, 3 B. L. R., 4. Cr., 50: 12 W. R., Cr., 47, distinguished. IN THE MATTER OF OKHOY KUMAR [7 C. L. R., 393]

23. ———— *Sentence imposed in British India postponed till expiry of a sentence imposed in Mysore—Criminal Procedure Code (1882), s. 11—Power of Magistrate.*—It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of a sentence in Mysore. *QUEEN-EMPERESS v. VENKATARAM JETTI* . . . I. L. R., 20 Mad., 444

24. ———— *Order for punishment on contingent failure to perform work—Act XIII of 1859, s. 2.*—An order of a Magistrate passed under s. 2 of Act XIII of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make such an order until the failure had occurred and been proved before him. *REG. v. JOMA BIN BALU* . . . 4 Bom., Cr., 37

25. ———— *Sentence under repealed Act—Cattle Trespass Acts, III of 1857 and I of 1871—Conviction under wrong Act.*—Where a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (Act III of 1857), when the Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence, as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done. *MOHESH NATH v. HURRO MOHEN GHOSAL* . . . 16 W. R., Cr., 12

26. ———— *Sentence of penal servitude.*—The punishment of penal servitude is only applicable to Europeans and Americans. *QUEEN-EMPERESS v. DUMA BAIDYA* . . . I. L. R., 19 Mad., 483

27. ———— *Passing sentence before judgment—Criminal Procedure Code (Act X of 1882), ss. 366, 367.*—A sentence which has been passed or a direction that an accused be set at liberty

SENTENCE—continued

1 GENERAL CASES—concluded

which has been given at a sessions trial before the judgment required by s 367 of the Code of Criminal Procedure, 1862 has been written illegal QUEEN v HARGOBIND SINGH

[1 L R, 14 All, 242]

28 ——— Imposition of non appealable sentences—The imposition by Magistrates of non appealable sentences in cases in which the facts are such as to render it very desirable that an appealable sentence should be passed disapproved of JATBA SINGH v RAZAT SINGH

[1 L R, 20 Cal, 483]

■ CAPITAL SENTENCE

29 ——— Sentence on conviction of murder—Sentence of death or transportation—On a conviction for murder, the only punishments that can legally be awarded are death or transportation for life QUEEN v BANI DASS

[14 W R, Cr, 2]

QUEEN v JAMAL

16 W R, Cr, 75

30 ——— Discretion of

31 ——— Duty of Magistrates—Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence QUEEN v SHIV NARAIN PALODHRE

[7 W R, Cr, 33]

32 ——— Justification for sentence of death—Sentence of transportation—The fact that except death no punishment more severe than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted, is not of itself sufficient to justify the Court in condemning the convict to death QUEEN v NGA HOAT DE

[10 W R, Cr, 64]

33 ——— Conviction of person under transportation of murder—Penal Code, s 303—Where a person under sentence of transportation for life on a conviction for murder is found guilty of murder as a subsequent and different charge the only sentence that can be passed on him under s 303 of the Penal Code is death QUEEN v DEODHAR SHAMONT alias I JEJOR

19 W R, Cr, 45

34 ——— Pregnancy of accused convicted of murder—Suspension of sentence—Capital sentence could be pronounced on a conviction

110 W R, Cr, 66

SENTENCE—continued

2 CAPITAL SENTENCE—concluded

35 ——— Suspension of sentence—When a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery QUEEN v GHURHURVER

W R, 1864, Cr, 1

QUEEN v TEPOO

W R, Cr, 15

Since expressly provided for by s 303, Criminal Procedure Code, 1872 and s 382 of Act of 1894

3 CUMULATIVE SENTENCES

36 ——— Sentencing twice for same

illegal GOVERNMENT v LALAWUN SINGH

[1 Agra, Cr, 31]

37 ——— Cases where same acts are the basis of two charges and convictions—Sentence on each charge—Where substantially only one offence has been committed, and the acts which are the basis of a prisoner's conviction on one charge are the same as the acts which are the basis of his conviction on another charge, cumulative sentences on each charge should not be passed QUEEN v RADHAKANTH PAUL

9 W R, Cr, 12

QUEEN v CHUNDER KANT LAROREE

[12 W R, Cr, 2]

38 ——— Conviction on several charges forming substantially one offence—Criminal Procedure Code, 1861, s 36—Where a person, though charged under different sections of the Penal Code was convicted of what was substantially but a single offence—Held that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment as for separate offences under s 46 of the Code of Criminal Procedure exceeding in the aggregate the punishment which it was competent for the Court to inflict on conviction of a single offence REG v GANG LADU

[3 Bom, 132 2nd Ed, 126]

39 ——— Improper sentence—Where a person, though charged under two heads was found guilty of what was substantially but one offence—Held that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed REG v LOBA KARTHEG

4 Bom, Cr, 12

40 ———

see principal offence ANONYMOUS

[6 Ind, App, 47]

SENTENCE—continued.

3. CUMULATIVE SENTENCES—continued.

41. ———— Act coupled with intention

—*Same act constituting a less grave offence.*—Where the act of an accused person, coupled with his intention or knowledge, constitutes a graver offence, the circumstance that the same act also answers to the definition of another less grave offence does not render him liable to a cumulative punishment. Case where different statutes provide separate punishments for the same act, distinguished. REG. v. DON BAPAYA 11 Bom., 13

42. ———— Conviction of separate offences—

Criminal Procedure Code, 1861, s. 46.—*Separate sentences to take effect successively.*—Where prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that the imprisonment in the second case should commence on the expiration of that in the first, and so on. ANONYMOUS . 4 Mad., Ap., 27

43. ———— Separate sentence to take effect successively.

—In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section, which have been clearly proved against them. On conviction on each of these separate charges, a separate sentence on each conviction should be passed, with a direction (under s. 317 of the Criminal Procedure Code, 1872) that each should take effect on the expiry of the next prior sentence. QUEEN v. SOBRAL GOWALAH [20 W. R., Cr., 70

44. ———— Maximum term of punishment—

Joinder of charges.—Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict. IN THE MATTER OF DAULATIA [I. L. R., 3 All., 305

45. ———— Conviction of several instances of same offence—

Aggregate sentence for purpose of appeal.—*Separate sentence on each offence.*—For purposes of appeal, the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence. *Semble*—That where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head,—*Held* that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court. REG. v. GULAM ABAS 12 Bom., 147

46. ———— Simultaneous convictions

—*Sentence for purposes of appeal.*—*Criminal Procedure Code, 1872, s. 314.*—The aggregate of the

SENTENCE—continued.

3. CUMULATIVE SENTENCES—continued.

sentences passed under s. 314 of the Code of Criminal Procedure in a case of simultaneous convictions for several offences must be considered a single sentence for the purposes of confirmation or appeal. REG. v. RAMA BEINGOWDA [I. L. R., 1 Bom., 223

47. ———— Separate sentences—

Abetment of abduction and wrongful confinement.—*Penal Code, ss. 343, 498.*—The prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343,—*Held* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone. QUEEN v. ISHWAR CHANDRA JOGEE [W. R., 1884, Cr., 21

48. ———— Abduction of child to get property from its person—

Theft after preparation to cause death.—*Penal Code, ss. 369, 382.*—Separate sentences cannot be awarded in one case for abducting a child in order to take property from its person (s. 369), and theft after preparation to cause death, etc. (s. 382), where the evidence shows that the act is one and the same. The sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, etc., within the meaning of that section. QUEEN v. KASHI NATH CHUNGO [8 W. R., Cr., 84

49. ———— Penal Code, s. 369

—*Abduction with intent to take moveable property.*—*Second punishment for theft.*—A prisoner tried, convicted, and punished under s. 369 of the Penal Code of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction; and the second punishment for a theft is by the present Code of Criminal Procedure illegal. QUEEN v. NOUJAN. NOUJAN v. QUEEN . 7 Mad., 375

50. ———— Penal Code, ss. 71,

183, and 353—*Resisting taking of property by public servant.*—*Using criminal force to deter public servant from doing his duty.*—*Held* on the facts of this case that a party (A) who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which A was charged with having misappropriated, was guilty of separate offences under ss. 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by s. 71 of that Code. QUEEN v. JOYAH MOHUN CHUNDER [14 W. R., Cr., 19

51. ———— Threatening witnesses—

Sentence for each offence.—An accused who threatened three witnesses was convicted and sentenced to four months' imprisonment for the threat to each witness, in all to one year. It was held that, if a person at one time criminally intimidates three

SENTENCE—continued

3 CUMULATIVE SENTENCES—continued

different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence. The facts and evidence in this case however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust. *IN THE MATTER OF GOOLZAR KHAN* 10 W. R., Cr., 30

52 ——— *Culpable homicide and being member of unlawful assembly*—The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder and for being a member of an unlawful assembly. The two offences however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed. *QUEEN v. HUBBERDOOLAH*

[7 W. R., Cr., 13]

53. ——— *Dacoity with murder—Penal Code s. 890*—If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 306 of the Penal Code. But he cannot be separately convicted of murder under s. 302 and of committing dacoity under s. 395. *QUEEN v. RUDHO*

[W. R., 1884, Cr., 30]

54 ——— *Dacoity and receiving stolen property*—A person convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired. (*Assentiente LOCH, J.*) *BHUTUB SEAL v. QUEEN* *QUEEN v. BHUTUB SEAL*

[W. R., 1884, Cr., 27]

QUEEN v. ABDOL HOSSEIN 1 W. R., Cr., 48

55 ——— *Rescuing from lawful custody and using criminal force—Penal Code s. 302 and s. 303*

When the prisoner has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under s. 225 for escape, s. 225 for rescuing from lawful custody, and under s. 353 for using criminal force in so doing and sentenced to separate punishments under each section—*Held* that the prisoners had only done one act and were guilty of only one offence, and should have been found guilty under ss. 225 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly. *QUEEN v. KALISAYAR SANDAL* 3 B. L. R., A. Cr., 14

QUEEN v. DINA SHEIKH

[3 B. L. R., A. Cr., 15 note: 10 W. R., Cr., 63]

So where prisoners were accused of rioting and using criminal force it was held only one offence. *IN THE MATTER OF MURRAYSON SING*

[10 W. R., Cr., 45]

56 ——— *Making false charge—Giving false evidence—Separate offences*—

SENTENCE—continued

3 CUMULATIVE SENTENCES—continued

The offence of making a false charge and the offence of intentionally giving false evidence are not cognate offences or parts of the same offence but may be punished separately. *QUEEN v. ABDOL AZEEZ*

[7 W. R., Cr., 59]

57 ——— *Penal Code, ss. 71, 193, 211—Concurrent sentences—Criminal Procedure Code (Act X of 1882), s. 85—Enhancement of sentence*—Where the accused, who was a head constable, was found guilty of making a false charge under s. 211, and of giving false evidence under s. 193 of the Penal Code (Act XLV of 1860), and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently—*Held* that the sentences were inadequate and illegal. Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence, and as the two offences were distinct the High Court directed, under s. 35 of the Criminal Procedure Code (Act X of 1882) one sentence to commence after the expiration of the other. *QUEEN v. ABDOL AZEEZ*, 7 W. R., Cr., 59, followed. *QUEEN v. EXPRESS v. PIR MAHOMED* 2 C.B.

[I. L. R., 10 Bom., 254]

58 ——— *Conviction of several offences*—Two prisoners having been convicted of forgery and other offences were sentenced each to an aggregate amount of punishment. *Held* that it was an irregularity not to pass a separate sentence under each independent head of the charge. *REG v. VINAYAK TRIPAK*

[2 Bom., 414. 2nd Ed., 391]

REG v. MRAB TRIPAK 5 Bom., Cr., 3

59 ——— *Distinct offences—Simultaneous sentence*—Three prisoners were charged with five distinct offences of house breaking by night and were sentenced to two years' rigorous imprisonment in each case. *Held* that the Magistrate had power only to pass sentence of four years' imprisonment upon each prisoner, but according to the sentence all the punishments inflicted would be going on simultaneously. *ANONYMOUS*

[5 Mad., Ap., 42]

60 ——— *Criminal Procedure Code, s. 35—Distinct offences—Penal Code, ss. 75, 411*—A person convicted under ss. 75 and 411 of the Penal Code is not convicted of distinct offences. *ANONYMOUS*

appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused for trial to the Court of Session. *QUEEN v. EXPRESS v. KHALAK*

[I. L. R., 11 All., 393]

61. ——— *House breaking and theft*—If a man break into a dwelling-house at night and steal property therefrom, the crime is in

SENTEENCE—continued

3. COMPUTATIVE SENTENCES—continued.

73. Kississippi—

369—The offence described in s 303 of the Penal

2010
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[8 W. R., Cr., 35

14. Selling for purposes of prostitution—There is nothing illegal in passing separate sentences for kidnapping and for selling for purposes of prostitution. Queen v. DOUGLAS Doss. 7 W R. 104.

751.—Legal assembly—There cannot be a conviction both of "being members of an illegal assembly" and of "being members of an illegal assembly." The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. *Mirzan Khatun v. Divan Ramthai Gooroo*. 1 W. R. 67, 7.

70. —————
 assembling and rioting with deadly weapon — Penal Code, ss 144, 148 — There is nothing illegal in sentencing a prisoner for both offences of joining an unlawful assembly armed with a deadly weapon, (ss 144), and rioting armed with a deadly weapon, although the former is always merged in the latter offence. SIKKINDASSAN

22. [6] W. H. C. S.
 with deadly weapon.—Causing hurt by shooting—
 If before witnesses are charged both with robbing, beating
 and shooting, and their conviction of the latter offense
 rests solely on the fact of the shooting, the defendant is
 not guilty of the latter offense.

either one or other of these offices QUARTY 2
9 W R, Cr., 33
78

deadly weapon—Greece hurt—Penal Code, ss. 143, 144, and 332—The office of notary, armed with deadly weapons, and stabbing a person on whose premises the not takes place, are distinct offences and punishable as separate offences under ss. 148, 149, and 321 of the Penal Code, ss. 149 being read in connection to ss. 148. GRECE v. CATALANARD

[7 W R., Cr., 60
70—
Conviction of
making and carrying
arm by dangerous weapon—
Distinct offenses—Separate charges—Penal Code,
§§. 71, 149, 119, 324—Act X of 1892 (Criminal
Procedure Code), §§. 35, 338—Act X of 1873 (Cr.
minal Procedure Code), §§. 811, 812.]

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SENTENCES—continued

U CUMULATIVE SENTENCES—continued.

1960), the two offices being part of the same organization, the latter following the housekeeping of the prisoner as well as of the prisoner's family. The prisoner was sentenced to 10 years of imprisonment under a 4-57 and 4-58, and 4-59, and 4-60, and 4-61, and 4-62, and 4-63, and 4-64, and 4-65, and 4-66, and 4-67, and 4-68, and 4-69, and 4-70, and 4-71, and 4-72, and 4-73, and 4-74, and 4-75, and 4-76, and 4-77, and 4-78, and 4-79, and 4-80, and 4-81, and 4-82, and 4-83, and 4-84, and 4-85, and 4-86, and 4-87, and 4-88, and 4-89, and 4-90, and 4-91, and 4-92, and 4-93, and 4-94, and 4-95, and 4-96, and 4-97, and 4-98, and 4-99, and 4-100, and 4-101, and 4-102, and 4-103, and 4-104, and 4-105, and 4-106, and 4-107, and 4-108, and 4-109, and 4-110, and 4-111, and 4-112, and 4-113, and 4-114, and 4-115, and 4-116, and 4-117, and 4-118, and 4-119, and 4-120, and 4-121, and 4-122, and 4-123, and 4-124, and 4-125, and 4-126, and 4-127, and 4-128, and 4-129, and 4-130, and 4-131, and 4-132, and 4-133, and 4-134, and 4-135, and 4-136, and 4-137, and 4-138, and 4-139, and 4-140, and 4-141, and 4-142, and 4-143, and 4-144, and 4-145, and 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Justice" who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment.

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pent to indicate, the sentences were legal under a 35
of the Criminal Procedure Code (Act X of 1862).
Per Jadhav, J.—The rules for assessment of
punishment contained in a 454 of the Criminal
Procedure Code of 1872, having been omitted in
the Criminal Procedure Code of 1862, must
be taken to have been repealed by the Criminal

70. Working houses—and the—Code, ss 380 and 455
—Diagnosis as to whether criminal or pauper

under ss. 454 and 480 is legal for junk and house-
ware and other. Quany + Myia Novoborodskaya
71. Penal Code (Act
XLV of 1860), s. 71—Criminal Procedure Code
(Act V of 1893), s. 35—Conviction of several

breaking in order to commit theft and, he may be charged with, and convicted of, each of these offenses. In awarding punishment under the provisions of § 71 of the Penal Code (Act No. 13607) the Court should pass the sentence for each of these crimes in question and not a separate one for each.

correct. If in such a case two sentences are passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court that would be an irregularity, and a *coram illegality*, calling for the interference of a Court of appeal or revision. *Ottobelli v. Ottobelli*.—*Min. Offences*.

72
House-Rep.
and streets first.—The printer entered a house
for the purpose of committing an assault, and
carrying out that intention, caused grievous hurt
in committing and publishing him for the same
in contempt of the laws of the State.

office (previous hurt).—*Affid* that it was not neces-
sary to pass a separate sentence for the offence of
Loughlin, James. CHAS. F. HANCOCK JUDGE
[3 W. R., Cr., 20]

SENTENCES—continued

U CUMULATIVE SENTENCES—continued.

[illegible]

Justice" who tried the case. The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment.

[illegible]

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punishment contained in a 454 of the Criminal
Procedure Code of 1872, having been omitted in
the Criminal Procedure Code of 1862, must
be taken to have been repealed by the Criminal

70. Working houses—Legal Code, ss 380 and 454
—Diagnosis as to whether criminal or punishable

under ss. 454 and 480 is legal for junk mg houses—
pass and libel. Quay + Myra Novoborshitzin
71. Penal Code (Act
XLV of 1860), s. 71—Criminal Procedure Code
(Act I of 1893), s. 35—Conviction of several

of persons in order to commit breaking in and theft, he may be charged with, and convicted of, each of the offenses. In awarding punishment under the provisions of Art. 71 of the Penal Code (Act No. 13607) the Court should pass a sentence for either of said crimes in question and not a separate one for each.

correct. If in such a case two sentences are passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court that would be an irregularity, and a *non est*, calling for the interference of a Court of appeal or revision. O'Connell v. The King (1907) 12 O.R. 222.

72
House-Rep.
and streets first.—The printer entered a house
for the purpose of committing an assault, and
carrying out that intention, caused grievous hurt
in committing and publishing him for the substance

office (previous hurt).—*Affid* that it was not necessary to pass a separate sentence for the offence of LUNACY. CHAS. F. HANCOCK JUDGE

SENTENCE—continued.

3. CUMULATIVE SENTENCES—continued.

as amended by s. 4 of Act VIII of 1882, which limit had not been exceeded in the present case. IN THE MATTER OF CHANDRA KANT BHATTACHARYA. CHANDRA KANT BHATTACHARYA v. QUEEN-EMRESS. I. L. R., 12 Cal., 495

81. Penal Code (Act XLT of 1860), ss. 147, 353, and 355. Cumulative sentences under—*Legality of sentence—Criminal Procedure Code (Act X of 1882)*, ss. 35, 235.—*Held* that illegal where the force which was used, and which formed one of the component elements of the offence of rioting, was the criminal force used to the public servants. *Held* also that a sentence under s. 353, Penal Code, for actually committing an offence under that section, and a further sentence under s. 353 read with s. 149 for committing the same offence constitutively, is illegal. The High Court set aside the cumulative sentences under ss. 353 and 355 respectively, but upheld the sentence under s. 147. *REVENUE v. QUEEN-EMRESS*. 3 C. W. N., 174

82. *Penal Code (Act VIII of 1882)*, s. 4—*Offence made up of several offences—Rioting—Grievous hurt—Criminal Procedure Code, 1882*, s. 235—*Penal Code*, ss. 146, 147, 148, 355.—A member of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt. *EMRESS v. RAM PATAK*. I. L. R., 6 All., 121

83. *Separate charges—Criminal Procedure Code (Act X of 1872)*, s. 454, *illus.* (f)—*Penal Code (Act XLT of 1860)*, ss. 147, 148, and 324.—Under s. 454 of the Criminal Procedure Code, the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code must not exceed that which may be awarded for the gravest offence. *Query*—Whether separate convictions under ss. 147 and 324 of the Penal Code are legal. IN THE MATTER OF THE PRISON OF JUDUR KAZI. *EMRESS v. JUDUR KAZI*. I. L. R., 6 Cal., 718 S. C. IN RE JUDUR KAZI. 8 C. L. R., 390

84. *Rioting—Grievous hurt—Criminal Procedure Code, 1882*, s. 235—*Penal Code*, ss. 146, 147, 148, 325.—Three persons who were convicted (i) of the riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325. *Held* by *PERKINS, C.J.*, and *STRAIGHT* and *TRAKET, J.J.*, that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from and independent of the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to

SENTENCE—continued.

3. CUMULATIVE SENTENCES—continued.

the hurt caused to each of the persons injured. *A* and *B* were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to *X*, and *B* was further charged under s. 324 with causing a like hurt to *X*, *A* being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by *B* to *X*. *A* and *B* were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. *Held* that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently under s. 235 of the Criminal Procedure Code the several sentences passed were strictly legal. *LOK NATH SIKAR v. QUEEN-EMRESS*. I. L. R., 11 Cal., 349

80. Separate convictions for more than one offence where acts combined

form one offence—*Penal Code (Act XLT of 1860)*, ss. 148, 147, 324, 353—*Act VIII of 1882*, s. 4—*Criminal Procedure Code (Act X of 1882)*, s. 235.—Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, *A* and *B*, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon, and another by means of a dangerous weapon on *A*. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on *A*, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on *A*, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held* further that even if *A* had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 148 and 353 of the Penal Code, and combined, an offence under s. 147, and under s. 235, sub-s. (3), of the Code of Criminal Procedure, the accused might be charged with and tried at one trial for the offence under s. 147, and those under ss. 148 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code

3. CUMULATIVE SENTENCES—continued.

CI. T. R., 9 A11., 645

ss. 71 (para. 1), 144, 147, 148, 334—Act VIII of 1902

[T. L. R., 16 Calg., 442

90. Rioting—Dis-

90. Rioting—Dis-

LI. I. R., 16 Calg., 725

3. CUMULATIVE SENTENCES

92. ————— Rioting armed with

resist the execution of a decree obtained by A against

At the trial in the Court of Session all eight accused were convicted of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, viz., three years' rigorous imprisonment. Seven out of the eight were convicted of offences under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 832 of the Penal Code, the hurt therein charged being caused to police officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused, who was not convicted of an offence under s. 152, was convicted of an offence under s. 339, and for that offence was sentenced to a police officer's hurt being similarly caused to a police officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal—(1) that the sentences passed under s. 152 in addition to those under s. 148 were illegal; (2) that separate sentences under s. 152 and s. 332 were illegal; (3) that the cumulative sentences under s. 148 and s. 332 and s. 332 were illegal in so far as they exceeded the maximum.

SENTENCE—continued

3. CUMULATIVE SENTENCES—continued.

new force provided for either of the offences. *Held*, as regards (1), that as resistance to the police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the maximum punishment provided by s. 149, and having regard to the provisions of s. 71, the additional sentence under s. 152 was illegal. *Held*, as regards (2), that separate sentences under s. 152 and s. 235 and s. 343 were illegal, as the hurt inflicted on the police officers was the violence towards them which constituted the essence of the offence under s. 152. *Held*, as

93. I. T. R., 19 Cal., 105
94, 141, 326—Separate sentences for rioting and
Rental Code, ss. 71,

of rioting and is also found to have himself caused the
hurt, in
hurt,
any on
Barrup, I. T. R., 7 All., 257, approved. QUEEN-
KARNATAKA HANU PUYA, I. T. R., 17 Bom., 260

94. Personating pub-
lic servant—Exemption—Conviction for each offence necessary—separate sentences—Sentence prescribed by s. 235, 236—Where more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not; and, subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction. Under s. 5 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss. 170 and 353 of the Penal Code, committed in the same transaction, it appeared that but for personating a public servant the accused would not have been in a position to commit the act of extortion complained of. *Held* that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also did not apply because the words "constitute an offence" refer to the definition of offence contained in the Code, irrespective of the evidence whereby the act complained of is proved, and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s. 353; that in the present case the former offence was completed before the latter had begun; and that separate sentences for

SENTENCE—continued

3. CUMULATIVE SENTENCES—continued.

each offence were therefore not illegal. QUEEN-
KARNATAKA V. WAZIR JAK I. T. R., 10 All., 68
96. Receiving stolen
property and assisting in concealment of it—Penal Code, ss. 411, 414—Criminal Procedure Code, 1861, s. 46—The offences specified in ss. 411 and 414 of the Penal Code cannot be considered as two distinct offences, so as to allow of the procedure of s. 46 of the Criminal Procedure Code being adopted. *APPROVED*
[14 Mad., Apr., 14

96. persons
from the
property
could not be sentenced separately as for two offences of theft. QUEEN v. MOHAMED I. T. R., Cr., 38
97. Theft—Receiving stolen property—A person convicted of robbery or theft cannot be also convicted of dishonestly receiving (theft of the same property). QUEEN v. ALPOD DUTY ALPOD
QUEEN v. SAKKUNATH ADUR I. T. R., Cr., 27
QUEEN v. SAKKUNATH ADUR I. T. R., Cr., 63
QUEEN v. SAKKUNATH HANER I. T. R., Cr., 12
QUEEN v. SURESH CHANDRA HANER I. T. R., Cr., 13 note
98. Theft and mis-
chief—Double sentence—A double sentence for theft and mischief is illegal and improper. QUEEN-
KARNATAKA V. ADVANCE BHOOOMANA I. T. R., Cr., 5
99. House-breaking and theft—Separate conviction and sentence under ss. 459 and 479 and under ss. 457 and 480 of the Penal Code were set aside, and the convictions under s. 459 in the former case, and under s. 457 in the latter, allowed to stand. QUEEN v. SAKKUNATH I. T. R., Cr., 31
100. Criminal tri-
als—Conviction for each offence necessary—separate sentences—Sentence prescribed by s. 235, 236—Where more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not; and, subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction. Under s. 5 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss. 170 and 353 of the Penal Code, committed in the same transaction, it appeared that but for personating a public servant the accused would not have been in a position to commit the act of extortion complained of. *Held* that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also did not apply because the words "constitute an offence" refer to the definition of offence contained in the Code, irrespective of the evidence whereby the act complained of is proved, and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s. 353; that in the present case the former offence was completed before the latter had begun; and that separate sentences for

101. Trial Code, ss. 143, 253—A cumulative sentence under s. 143 of the Penal Code (being a member of an unlawful assembly), and under s. 253 (being a member of a criminal force against a public servant), was upheld by the High Court in this case. *THE MATTER OF*
GOVIND CHITRAKAR HOK I. T. R., Cr., 70
102. Special fine on each prisoner—Trial of several prisoners—A sentence

SENTENCE—continued.

5. IMPRISONMENT.

(a) IMPRISONMENT GENERALLY.

110. False statement on oath to public servant.—*Penal Code, s. 187—Illegal sentence.*—A sentence under s. 181 of the Penal Code which awards no term of imprisonment is illegal. *4 Mad., Ap., 18*

111. Accumulation of sentences of imprisonment.—*Criminal Procedure Code, 1861, s. 46—Sentences not simultaneous.*—Sentences of imprisonment might be accumulated beyond the period of fourteen years, notwithstanding s. 46 of the Criminal Procedure Code, which limit had reference only to sentences passed simultaneously, or passed upon charges tried simultaneously. *Queen v. Purnan, 7 W. R., Cr., 1*

112. Concurrent sentences.—*Criminal Procedure Code, 1882, s. 55.*—Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. *Queen-Empress v. Wazir Jan, 10 All., 58, referred to. Dattaraj Das v. Queen-Empress, 1. I. R., 25 Cal., 557*

113. *Criminal Procedure Code (Act X of 1882), s. 55—Sentences—Concurrent sentences of imprisonment—Penal Code (Act XVI of 1860), s. 46—Sentences of imprisonment passed for distinct offences to run concurrently are not warranted by law. Queen-Empress v. Wazir Jan, 10 All., 58, referred to. Dattaraj Das v. Queen-Empress, 1. I. R., 25 Cal., 557*

114. *Criminal Procedure Code (Act X of 1882), ss. 35 and 397—Concurrent sentences not authorized by the Code.*—There is no provision in the Code of Criminal Procedure by which a Court is empowered, on convicting an accused person of two or more offences at the same time, to direct that the sentences imposed in respect of such offences shall run concurrently. *Queen-Empress v. Ishari, 1. I. R., 20 All., 1*

115. *Criminal Procedure Code, 1872, s. 308—Penal Code, s. 65.*—S. 309 of the Criminal Procedure Code did not extend the period of imprisonment which might be awarded by a Magistrate under s. 65 of the Penal Code; it only regulated the proceedings of Magistrates whose powers were limited. *Empress v. Darya, 1. I. R., 1 All., 461*

116. Commencement of sentence of imprisonment.—*Postponement of sentence—Criminal Procedure Code (Act XXV of 1861), ss. 46, 47, 48, and 421.*—A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Procedure Code, a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor, except as provided for by s. 421 of the Code of Criminal Procedure, can a sentence, which is to take place immediately, be suspended. *In the matter of Krishnamand Bhattacharyya, 3 B. L. R., A. Cr., 50*

SENTENCE—continued.

4. FINE—continued.

of fine must impose a specific fine on each prisoner. *5 Mad., Ap., 5*

103. Wrongful confinement.—*Penal Code, s. 341.*—Fine alone is not a legal sentence for a prisoner convicted under s. 344 of the Penal Code. *Reg. v. Bahinrai Min Krishnaraj, 1 Bom., 39*

104. Separate offences.—*Alternative sentence allowed only in one.*—Where a conviction has been had under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment or fine is allowed, a sentence of fine cannot be passed. *Queen v. Bhogdur Mohan, 11 W. R., Cr., 39*

105. Offence under Act XIX of 1838, s. 13.—*Omission of owner of harbour craft to produce certificate of registry.*—The Legislature, when it enacted in s. 13 of Act XIX of 1838 that persons who committed certain acts should be "subject to a fine of ten times the fee" or "subject to a fine of ten rupees," intended that the penalties so specified should be inflicted in full. The owner of a harbour craft having been fined Rs. 2 for omission to produce a certificate of registry when demanded by the customs authorities, the High Court annulled the sentence as being illegal, and indicated the full penalty of ten rupees. *Empress v. Mahasaya Raza, 1. I. R., 7 Bom., 280*

106. Theft in dwelling-house.—*Penal Code, s. 380—Imprisonment.*—On conviction for theft in a dwelling under s. 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment. *Dattoo v. Zairah Bener, 16 W. R., Cr., 17*

107. Offence under Act XVII of 1854 (Railway Act), s. 34.—*Imprisonment.*—S. 34 of Act XVII of 1854 prescribes the mode in which fines levied under that Act are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed. *5 Mad., Ap., 44*

108. Transportation with fine.—*Lay of portion of fine.*—When a fine is imposed in addition to transportation, and the whole or part of the fine is levied, it is the duty of the Sessions Judges to inform the authorities at Port Blair of the fact. *Anonymous, 5 Mad., Ap., 44*

109. Imposition of additional fine under Court Fees Act (VII of 1870), s. 31.—*An Assistant Magistrate, having convicted the accused persons, sentenced them to pay a fine, out of which Rs. 2 was to be paid to the complainant for his expenses; the Deputy Magistrate, on appeal, having confirmed the conviction, passed an order under Court Fees Act, s. 31 directing the accused to pay a further sum to the complainant. Held that the order was illegal, and should be set aside. Queen-Empress v. Tangavatu Chetty, 1. I. R., 22 Mad., 153*

had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. *LEGAL REPRESENTATIVE v. RADHOO CHURN ASH, GOVERNMENT v. RADHOO CHURN ASH* [18 W. R., Cr., 3]

131. Indefinite period of imprisonment in default of security, Order for.

—An order directing an accused "to be imprisoned until he gives security" is bad; a definite period for such imprisonment, not exceeding one year, should be stated in the order. *MAMMOJI RAKAR v. TAPRUVA PHAMNIK* [I. L. R., 8 Cal., 644]

132. Imprisonment in default of giving security for good behaviour—Criminal Procedure Code, 1861, s. 296.—Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour, under s. 296 of the Criminal Procedure Code, for a period of one year, his imprisonment in default of providing such order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner. *CHURN v. TORAL GUJAR* 3 W. W., 126

133. Receiving stolen property—Criminal Procedure Code, 1872, s. 505—Addition to sentence of order for security for good behaviour.—*P* was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped, to be rigorously imprisoned, and on the expiration of the term of imprisonment to furnish security for good behaviour. *Held* that the order requiring security should not have formed part of the sentence for the offence of which *P* was convicted. A proceeding should have been drawn out representing that the Magistrate was satisfied from the evidence as to general character adduced before him in the case, that *P* was by reputation an offender within the terms of s. 505 of Act X of 1872, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of imprisonment, *P* should be brought up for the purpose of being bound. *EMERSON v. PARVAT* [I. L. R., 1 A. J., 666]

134. Addition to sentence of further imprisonment in default of engagement to keep the peace—Criminal Procedure Code, 1869, s. 280.—The prisoner was convicted of an offence punishable under s. 307 of the Penal Code. In addition to the sentence passed upon him under that section, the Sessions Judge directed, under s. 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of Rs. 100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period. The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. *CHURN v. SETALAM* 6 Mad., 25

[I. L. R., 1 A. J., 666]

135. Imprisonment after execution of warrant—Criminal Procedure Code, s. 458—Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding, and arrears levied under a single warrant. *CHURN-BHAKSHAS v. NARAIN* [I. L. R., 9 A. J., 240]

136. Case under s. 21, Cattle Trespass Act, 1871—Sentence of fine or imprisonment in default of payment of compensation.—It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under s. 21 of the Cattle Trespass Act, 1871. In *THE MATTER OF KERRADI MUNDU* [2 C. L. R., 507]

137. Contempt of Court—Imprisonment added to fine—Trial of case of contempt.—Where, in punishing for contempt of Court, the summary procedure sanctioned by s. 163 of the Code of Criminal Procedure, 1861, is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment. In a case in which it was dealt with in a summary manner, the offence must, under s. 163, be tried by an officer other than the person before whom the contempt was committed. *CHURN v. CHUNDRI SERRUA ROY* [12 W. R., Cr., 18]

138. Making false charge—Penal Code, s. 211—Imprisonment with or without

135. Imprisonment for allowance remaining unpaid after execution of warrant—Criminal Procedure Code, s. 458—Maintenance—Wife—Breach of order for monthly allowance—Warrant for levying arrears for several months—Act I of 1868, s. 2, cl. 18.—"Imprisonment."—Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding, and arrears levied under a single warrant, the Magistrate acting under s. 458 of the Criminal Procedure Code has no power to pass a heavier sentence in default than one month's imprisonment, as if the warrant only related to a single breach of the order. *PER BAGE, C. J.*—S. 458 contemplates that a separate warrant should issue for each separate breach of the order. *PER STRAIGHT, J.*—The third paragraph of s. 458 ought to be strictly construed and, as far as possible, construed in favour of the subject. Under the section, a condition precedent to the institution of a term of imprisonment is the issue of a warrant in respect of each breach of the order direct- ing maintenance, and where, after distress has been issued, *nulla bona* is the return. The section contemplates one warrant and one punishment, and not a cumulative warrant and cumulative punishment. Also *PER STRAIGHT, J.*—With reference to s. 2, cl. (18), of the General Clauses Act (I of 1863), "imprisonment" in s. 458 of the Criminal Procedure Code may be either simple or rigorous. *PER OLD-RIED, J.*—A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant. *CHURN-BHAKSHAS v. NARAIN* [I. L. R., 9 A. J., 240]

(b) IMPRISONMENT AND FINE.

136. Case under s. 21, Cattle Trespass Act, 1871—Sentence of fine or imprisonment in default of payment of compensation.—It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under s. 21 of the Cattle Trespass Act, 1871. In *THE MATTER OF KERRADI MUNDU* [2 C. L. R., 507]

137. Contempt of Court—Imprisonment added to fine—Trial of case of contempt.—Where, in punishing for contempt of Court, the summary procedure sanctioned by s. 163 of the Code of Criminal Procedure, 1861, is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment. In a case in which it was dealt with in a summary manner, the offence must, under s. 163, be tried by an officer other than the person before whom the contempt was committed. *CHURN v. CHUNDRI SERRUA ROY* [12 W. R., Cr., 18]

138. Making false charge—Penal Code, s. 211—Imprisonment with or without

139. Addition to sentence of further imprisonment in default of engagement to keep the peace—Criminal Procedure Code, 1869, s. 280.—The prisoner was convicted of an offence punishable under s. 307 of the Penal Code. In addition to the sentence passed upon him under that section, the Sessions Judge directed, under s. 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of Rs. 100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period. The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. *CHURN v. SETALAM* 6 Mad., 25

3. IMPRISONMENT—continued

(MADRAS, 1883), and sentenced to pay a fine of Rs 100 for a week — *MADRAS* (1) that a 67 of the Indian Penal Code refers solely to cases in which the offence punishable with fine only has no application to offences punishable either with imprisonment or

1) 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846,

165 ————— Sentences, Powers of Appellate Court in respect of — Magistrate, Jurisdiction of — Criminal Procedure Code (1932), s. 433 — Enhancement of sentence — Where a District Magistrate acted as an Appellate Court in a criminal case altered a sentence of four months' rigorous imprisonment to one of three months' rigorous imprisonment, but imposed a fine of Rs. 10, or in default of a further term of six weeks' rigorous imprisonment, — *Appeal* that, as the latter sentence was in excess of the powers of the Magistrate having regard to s. 423 of the Code of Criminal Procedure *Quere* Expresses a dissent

[L. R. 17 All, 67]

166 Powers of Appellate Court as to Affirmation of Judgment—Affirmation

107. Criminal Procedure Code (1883), s. 423—The accused was convicted of criminal breach of trust and sentenced to fine or imprisonment for six months. On appeal, the conviction was upheld, but the sentence was altered to one of six months' rigorous imprisonment for three months' rigorous imprisonment. The accused applied to the High Court in revision, contending that the infliction of the sentence amounted to an enhancement of the sentence beyond the powers of the Appellate Court under s. 423 of the Code of Criminal Procedure (Act X of 1883). Held: That there was no enhancement of the sentence. *Queen Empress v. Jaim, I. L. R. 17, All. 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 8*

Chromatol Pro-

101. A
degree of severity. In each case the Court has to
sentence is altered to a punishment of a lesser
rehabilitation of sentence when only a portion of a
can be laid down to determine what is or is not
of the Criminal Procedure Code. No general rule
sentence such as was contrary to the terms of s. 423
was held not to amount to an enhancement of the
rigorous imprisonment. This alteration of sentence
fine of Rs. 500, or in default of payment to 15 days

SENTENCE—continued

5 IMPRISONMENT—continued

consider what is the effect of the alteration. Queen-
Bess & Chagan Jagannath, I. T. R., 23 Bom.
#39, dissected from. RAKHAT BAY & KINODOR
I. T. R., 27 Calo, 175
FRESHWATER DOIT.

6 SENTENCE AFTER PREVIOUS
CONVICTION

CO-ACTION

188 ————— Federal Code, s 15 —————
 and stolen property acquired by larceny — Where
 soon after his release on expiry of a sentence of
 seven years imprisonment on conviction of "receiv-
 ing stolen property acquired by larceny," a person is
 charged with having acquired and sold the same

199

1 C. L. B. 481

After the code came into operation
4 W. R., Cr., 9
4 Bom., Cr., 11
REG. & KANAKA BIK 1890

121

170
Previous Code—An accused person can only be punished under a Code where the previous conviction has been under that Code
 Code Buddh v. Hargwan & Kharsas
 [10 C. L. R., 332]

173

ing an additional provision under s. 25 of the Penal Code, as on a second conviction, the evidence that there was a prior conviction against the accused under the Penal Code must be clear and precise. *Queen v. Yamundhi Shikri & Anns*, 14 W. R. Cr. 7, 1914.

103 21
M. 877

[illegible]

last been convicted. Here a ARYA VALAD KAVAI
he is liable to suffer for the crime of which he has
prisoned for a longer period of transportation than
and committing the latter sentence, condemn such

173
Attempt to commit offense—Penal Code, Ch. XXIII.—s. 73
to Bom., Cr. 38

SENTENCE—continued.

6. SENTENCE AFTER PREVIOUS CONVIC-

TION—continued.

179. Prisoner having had several previous convictions.—Where the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished as after previous conviction under s. 75 of the Penal Code. REG. v. GAYN LAD 2 BOM., 132: 2nd Ed., 126

180. Imprisonment—Power of Magistrate—Counterfeit marks on documents.—The prisoner was convicted under s. 475 of the Penal Code, and, having been previously convicted of an offence punishable under Ch. XVII of the Code, the Magistrate sentenced him to four years' rigorous imprisonment. Held that the Magistrate had power to pass sentence of two years' imprisonment only under s. 75, Penal Code. ANONYMOUS 6 MAD., AP., 3

181. Attempt to commit offence—Penal Code, Ch. XVII, s. 457—Lurking house-trespass.—A person, having been convicted of an offence punishable under s. 457 (Ch. XVII) of the Penal Code, was subsequently guilty of an attempt to commit such an offence. Held that the provisions of s. 75 of the Penal Code were not applicable to such person. EMPRESS v. RAM DAYAL 11 T. L. R., 3 ALL., 778

182. Conviction of an attempt to commit theft—Previous conviction of theft.—(MIRVIT, J., dissentient).—If a person who has been convicted of an offence punishable, under Ch. XII or Ch. XVII of the Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code. EMPRESS v. NANA RAHIM 11 T. L. R., 5 BOM., 140

183. and ss. 179, 511—Attempt to commit an offence—Enhancement of sentence for previous conviction—Previous conviction.—A person who has been convicted of the offence of theft (an offence punishable under Ch. XVII of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code. QUEEN-EMPRESS v. SHARABAN BAHU 11 T. L. R., 14 CALC., 357

184. and ss. 457 and 511—Attempt to commit house-breaking by night after previous conviction.—S. 75 of Act XLV of 1860 does not apply to the case of an attempt to commit the offence punishable under s. 557 of the Code, after previous convictions of offences falling within Ch. XII or Ch. XVII, such offence being punishable under s. 511. SHEO SARAN DATO v. EMPRESS, 11 T. R., 9 CALC., 877; EMPRESS v. RAM DAYAL, 11 T. R., 3 ALL., 778; EMPRESS v. NANA RAHIM, 11 T. R., 5 BOM., 140; QUEEN-EMPRESS v. SHARABAN BAHU, 11 T. R., 14 CALC., 357, referred to. QUEEN-EMPRESS v. ADURMA 11 T. R., 17 ALL., 120

SENTENCE—continued.

6. SENTENCE AFTER PREVIOUS CONVIC-

TION—continued.

174. Previous convictions of offence not under Ch. XVII of Penal Code.—An offender is only liable to enhanced punishment, under s. 75 of the Penal Code, for an offence punishable under Ch. XVII, after having been punished with imprisonment for the same offence or for an offence punishable under the same chapter. QUEEN v. FURON 5 W. R., CR., 66

175. Previous offence under Ch. XII or Ch. XVII of the Penal Code.—Held that, where a person commits an offence punishable under Ch. XII or Ch. XVII of the Penal Code punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subject, on being convicted of the second offence, to the enhanced punishment provided in s. 75 of the Penal Code. EMPRESS v. MEGHA 11 T. R., 1 ALL., 637

176. Additional sentence—Sufficiency of sentence.—The object of s. 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient. SHEO SARAN DATO v. EMPRESS 11 T. L. R., 9 CALC., 877

177. Enhanced punishment—Transportation for seven years—Imprisonment.—The accused, having been previously convicted of offences punishable, under Ch. XII or Ch. XVII of the Penal Code, with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of those chapters punishable with imprisonment which may extend to three years, and sentenced to imprisonment for seven years. Held that a sentence of imprisonment for seven years was illegal. Under s. 75 of the Penal Code, the accused might be transported for life, but he could not be imprisoned for a longer period than six years. EMPRESS v. MAHADU 11 T. L. R., 6 BOM., 690

178. After actual sentence—Penal Code, s. 46.—Where a first class Subordinate Magistrate sentenced a prisoner to six months' imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' imprisonment under s. 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court. ANONYMOUS 5 MAD., AP., 3

ENTRANCE—continued

8 TRANSPORTATION—continued

was held to be illegal. *QUEEN v. KELLY STONE*
[3 W. R., Cr., 16]

183. *Billings v. W.*—A sentence of death was committed in violation of a statute which prohibited a person from committing murder in the belief that the deceased was a wizard and the cause of the child's illness, and that by killing the deceased the child's life might be saved. *QUEEN v. O'BRIEN SUPPES*
[6 W. R., Cr., 82]

185. *Reckless assault*—The punishment of transportation for life was inflicted instead of capital punishment in a case where there was no intention to cause death, but a reckless assault with a deadly weapon which inflicted an injury likely to cause death. *QUEEN v. KINLOCH*
[6 W. R., Cr., 20]

186. *Committment of capital sentences*—*Likelihood of accident at execution*—Where the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was committed to one for transportation for life. *BOODNOO TOLMAN v. EX.*
[3 O. L. R., 216]

187. *Penal Code, s. 58*—*Measures of punishment*—*Penal Code, s. 412*.—A sentence of transportation under s. 412 and 58 of the Penal Code cannot exceed ten years. *QUEEN v. MONAGHAN*
[5 W. R., Cr., 16]

188. *Measures of punishment*—*Police evidence and forgery*—Under s. 29 of the Penal Code, no sentence of transportation for a shorter period than seven years can be passed on any charge. Therefore where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under s. 193, and of forgery under s. 467, and sentenced to seven years' transportation for the first offence and a further transportation for the second offence and a further transportation for three years for the second offence, the second sentence was qualified as illegal. *QUEEN v. GORE CHURCHMAN ROY*
[8 W. R., Cr., 3]

Criminal Procedure
[W. R., 1864, Cr., 35]

6. SENTENCE AFTER PREVIOUS CONVIC.

TION—concluded.

185. and s. 511—

Attempt to commit an offence after previous conviction—s. 75 of the Penal Code does not apply to offences which are committed to a 511 of that Code. The offences which come under s. 511 must be punished entirely irrespective of a 56 Queen's impress. *Agudwin, I. L. R., 17 All., approved QUEEN v. EXPRESS v. BHAROSA*
[I. L. R., 17 All., 123]

7 SOLITARY CONFINEMENT

186. *s. 74*—*Duration of solitary confinement*—Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code, it is to be imposed at intervals. *IN THE MATTER OF "RAY SUE METER"*
[3 B. L. R., A. Cr., 49]

187. *s. 73*—*Criminal Procedure*
[I. L. R., 6 All., 83]

188. *Measure of punishment*—*Murder*—A sentence of transportation other than for life is illegal in the case of a prisoner convicted of murder. *QUEEN v. BHAROSA MALLICK*
[6 W. R., Cr., 85]

189. *Measures of punishment*—*Attempt to murder*—*Penal Code, s. 307* and *s. 301*—*Attempt to murder*—*Causing hurt in committing robbery*—Neither under s. 307 nor under s. 301 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awarded under those sections being transportation for life, or rigorous imprisonment for ten years, with hard labour. *QUEEN v. BHAROSA DOODAD*
[W. R., Cr., 41]

189. *Measures of punishment*—*Attempt to murder*—*Penal Code, s. 307* and *s. 301*—*Attempt to murder*—*Causing hurt in committing robbery*—Neither under s. 307 nor under s. 301 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awarded under those sections being transportation for life, or rigorous imprisonment for ten years, with hard labour. *QUEEN v. BHAROSA DOODAD*
[W. R., Cr., 41]

189. *Measures of punishment*—*Attempt to murder*—*Penal Code, s. 307* and *s. 301*—*Attempt to murder*—*Causing hurt in committing robbery*—Neither under s. 307 nor under s. 301 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awarded under those sections being transportation for life, or rigorous imprisonment for ten years, with hard labour. *QUEEN v. BHAROSA DOODAD*
[W. R., Cr., 41]

SENTENCE—continued.

8. TRANSPORTATION—continued.

200. *Communitation of sentence after amalgamating two sentences.*—To bring s. 59 of the Penal Code into operation, the punishment awarded on one offence must be seven years' imprisonment, and cannot be made up by adding two sentences together and then commuting the unexpired period to transportation. *QUEEN v. MOOTKE KONA* . . . 2 W. R., Cr., 1

QUEEN v. TONORAK . . . 3 W. R., Cr., 44
QUEEN v. SHOKAVLAK . . . 5 W. R., Cr., 44

201. *Communitation of sentence—Imprisonment in default of payment of fine.*—S. 59 of the Penal Code does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine. *KANUNSA v. QUEEN* [I. L. R., 5 Mad., 28

202. *Imprisonment—Unnatural offence.*—When an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment. *QUEEN v. NAIANA* . . . I. L. R., 1 A. L. J., 43

203. *Communitation of sentence—Powers under Act XV of 1862, s. 1—Imprisonment or transportation.*—An officer who, in the exercise of the powers described in s. 1, Act XV of 1862, had passed a sentence of imprisonment for seven years, had power, under s. 59 of the Penal Code, to commute that sentence into one of transportation for the like period. *JACKSON, J.*, dissented. *QUEEN v. BOODHOA*

[B. L. R., Sup. Vol., 839: 9 W. R., Cr., 6

204. *Communitation of sentence—Penal Code, ss. 376, 511—Attempt at rape.*—A was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under s. 59 of the Penal Code, to transportation for the same term. *Held* that, under ss. 376 and 511 of the Penal Code, a sentence of imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term. *QUEEN v. ALRIAN I. B. L. R., A. Cr., 5: 10 W. R., Cr., 10*

205. *Communitation of sentence—Imprisonment.*—When the law gives the alternative punishment of death, transportation for life, or rigorous imprisonment extending to ten years, if the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, change it to transportation for that period. *QUEEN v. ROGOO*

[W. R., 1884, Cr., 30

206. *Successive sentences of transportation—Criminal Procedure Code, 1861,*

SENTENCE—continued.

8. TRANSPORTATION—continued.

s. 46.—A sentence of transportation for two periods, each of seven years, one sentence to commence after the expiration of the other, was not warranted by s. 46 of the Code of Criminal Procedure, that section allowing such sentences only when the penalties consist of imprisonment. *QUEEN v. KASIRATY* [11 W. R., Cr., 10

9. WHIPPING.

207. *Sentence giving both whipping and imprisonment—Power of Magistrate—Act XIII of 1866, s. 27.*—Act XIII of 1866, s. 27, gave a Magistrate power to award either imprisonment or whipping, but not both, and a sentence which gave both was illegal. *QUEEN v. WZO* . . . Bourke, O. C., 268

208. *Person convicted of two or more offences under Penal Code—Imprisonment and whipping.*—When a person is convicted at one time of two or more offences punishable under the Penal Code, the Court is empowered to sentence the prisoner in the one case to rigorous imprisonment and in the other case to whipping under Act VI of 1864. *ANONYMOUS* . . . 15 Mad., Ap., 18

209. *Imprisonment in lieu of whipping—Criminal Procedure Code, s. 395—Court not authorized to inflict fine in lieu of whipping.*—A Court has no power, under s. 395 of the Criminal Procedure Code, to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether or to sentence the offender, in lieu of such whipping or of so much of the sentence of whipping as was not carried out, to imprisonment, etc. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine. *QUEEN-EMRESS v. SHROOY* [I. L. R., 11 A. L. J., 308

210. *Ground for sentence—Statement of grounds in judgment.*—When whipping is imposed as a punishment, the grounds for that form of punishment should be set out in the judgment. *BADRYA v. QUEEN* . . . I. L. R., 5 Mad., 158

211. *Sentence of imprisonment in lieu of whipping—Criminal Procedure Code (1882), s. 395—Powers of Magistrate.*—Where a prisoner who has been sentenced to whipping is found to be unfit to undergo such sentence, and such sentence is accordingly commuted to one of imprisonment, such substituted term of imprisonment must not bring the total term to which such prisoner is sentenced up to a term in excess of the maximum which the Court passing the sentence is competent to inflict. *Queen-Emress v. SHROOY*, I. L. R., 11 A. L. J., 309, referred to. *QUEEN-EMRESS v. RAM* [I. L. R., 21 A. L. J., 25

SENTENCE—continued.

10. POWER OF HIGH COURT AS TO

SENTENCES—continued.

Procedure Code, 1861, nullify the verdict of a jury by interfering to lessen the punishment. S. 405 referred to cases where the offence was proved, but where the punishment inflicted was held to be too severe, and not to cases where the conviction itself was considered improper. *QUREN v. BISSONATH MITTAR* [6 W. R., Cr., 6

226. Exercise of powers—Case

submitted for consideration of Government.—If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in cases of murder, the Judge may record these circumstances and submit them for the consideration of the Government, and the Government might, under s. 54, Criminal Procedure Code, 1861, act as to it seems proper. *QUREN v. DABBE* [W. R., 1864, Cr., 27

(d) REVERSAL.

227. "Reverse," Meaning of—

Criminal Procedure Code (Act XXV of 1861), ss. 419, 426.—The word "reverse" in ss. 419 and 426, Code of Criminal Procedure (Act XXV of 1861), ss. 280 and 283 of Act X of 1872, meant to make void, to set aside, or annul, and not merely to change or turn into the contrary. *QUREN v. BHANI BAX* [B. L. R., Sup. Vol., 459; 5 W. R., Cr., 80

228. Power to reverse sentence

—*Criminal Procedure Code (Act XXV of 1861), s. 426.*—A was charged with the offence of voluntarily causing hurt to C, and B was charged with the same offence, and also with the offence of abetting A. The Magistrate found A guilty of the offence, and sentenced him to three months' rigorous imprisonment. The Magistrate also found B guilty of abetting of the offence of voluntarily causing hurt to C, and sentenced him to one month's rigorous imprisonment and a fine. On appeal, the Sessions Judge held that there was no evidence to convict A, and he accordingly released the prisoner. The appeal of B, however, was rejected, on the ground that the evidence, though it did not prove him guilty of abetting, proved him guilty of voluntarily causing hurt; and therefore, under s. 426 of the Code of Criminal Procedure, the sentence could not be reversed. No "error or defect either in the charge or in the proceedings on trial" was alleged. *Held* (by MITTAR, J.) that s. 426 of the Code of Criminal Procedure did not apply. *QUREN v. MAHENDRANATH CHATTARJEE*. 5 B. L. R., Ap., 39

S. C. GOVT. MOTUN GHOSH v. MOHINDRO NATH CHATTARJEE. 13 W. R., Cr., 78

229. Reversal of conviction—

Reception of evidence inadmissible—Criminal Procedure Code, 1872, s. 280.—If in a case tried by a jury the High Court finds that inadmissible evidence has been received, but that, after setting it aside, there is other evidence on the record on which the jury may find a verdict of guilty, the High Court

SENTENCE—concluded.

10. POWER OF HIGH COURT AS TO

SENTENCES—concluded.

may reverse the conviction and sentence and order a new trial (s. 280 of the Code of Criminal Procedure). *Reg. v. AMRITA GOVINDA* 10 Bom., 497

SEPARATE ACQUISITION.

See HINDU LAW—JOINT FAMILY—NATURE OR, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY. See CASES UNDER HINDU LAW—JOINT FAMILY—RESORTION AND ONDS OF PROOF AS TO JOINT FAMILY.

SEPARATE CHARGES.

See CASES UNDER JOINDER OF CHARGES.

SEPARATE OFFENCES.

Conviction of—

See REVISION—CRIMINAL CASES—SENTENCES. B. L. R., Sup. Vol., 488

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

See STOLEN PROPERTY, OFFENCES RELATING TO. I. L. R., 1 All., 379

Trial of—

See CASES UNDER JOINDER OF CHARGES.

SEPARATE PROPERTY.

See CASES UNDER HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY. See CASES UNDER HUSBAND AND WIFE. See SUCCESSION ACT, s. 4.

[13 B. L. R., 383

SEQUESTATION.

1. Writ of sequestration—Con-

tempt of decree or order of Court—Rule of Bombay Supreme Court, 389—"Fortwith."—The process of sequestration for contempt of a decree or order of Court, as it existed in the late Supreme Court, will, in a proper case, issue out of the High Court. The object of rule 389 of the Supreme Court Rules, which required a party who wished to enforce an order by sequestration to indorse upon the copy of the order served upon his opponent a memorandum to the effect that in default of performance of the order he would be liable to be arrested and to have his estate sequestered, was to enable the party making such endorsement to apply *ex-parte* for the writ. In the absence of such a memorandum indorsed upon the copy order, a party desirous of enforcing an order by sequestration must give proper notice to his opponent of his intention to apply for the writ. An

SERVICE TENURE—continued.

female can inherit a majumdar's vatan. The Collector can assign the whole proceeds of a vatan to the officiating person who is entitled to retain such proceeds as his remuneration. *Bai Surar v. Gov- ernment of Bombay.* *Barunai Kurnahadas v. Bai Surar* . . . 8 Bom., A. C., 83

6. Right to officiate in propor- tion to shares held in vatan—*Discretion of Collector—Act XI of 1843.*—The plaintiff had two shares, and the defendant one, in a *patilki* vatan. In an action brought by the plaintiff to establish his right to officiate twice as often as the defendant, *Held* that the plaintiff was not necessarily entitled to such right, though the fact of his holding two shares in the vatan might be a reason for the Col- lector to exercise his discretion under Act XI of 1843 (when it was in force) in favour of the plaintiff by assigning to him a longer period of management than to the defendant, in the event of two shares not agreeing as to the person to officiate. *BHAVANI SADASHIV v. BHAVANI MANAJI* . . . 12 Bom., 232

7. Power of a vatanadar to create a perpetual *mutalik*—*Exclusion of successors from entire management of vatan—Karapatra grant, Construction of—Vatan—Sanaad, Construc- tion of.*—The creation of a perpetual *mutalik*, with a certain share of the vatan as *mitti* on account of *mutalik*, is within the powers of a holder of the vatan for the time being, more especially when it is done for good and valuable consideration passing to the vatan. But it is not competent to him to exclude his suc- cessors from the entire management of the vatan. In 1825 the ancestor of the plaintiff, who was a *desai* and the last proprietor of the *dehagati* vatan of Tegur, granted to the ancestor of the defendants a *karapatra* whereby, in consideration of the services the latter was to render to the former in recovering the vatan, the defendants' ancestor was to enjoy one- third of the vatan as *vatan mutalik* from generation to generation. Subsequently the plaintiff's ancestor granted to the defendants' ancestor a *sanaad* which referred to the *karapatra* already executed, and vested the entire management of the vatan in the defendants' ancestor from generation to generation. In 1846 the defendants' ancestor actually entered into the management, and continued to manage till 1850, in which year Government put the vatan under attachment. From 1850 to 1864 he remained out of possession, in consequence of the attachment. In 1864 Gov- ernment removed the attachment and restored the vatan to the plaintiff's father. On being asked by the Collector to appoint some one to take possession and management of the vatan, the plaintiff's father wrote a reply on the 15th July 1865 that he had appointed the defendants' father to manage it, and his death in 1880. On his death, a fresh *mookh- teenamma* was executed to the defendants 1 and 4 by the mother of the plaintiff, who was then a minor.

SERVICE TENURE—continued.

Under that *mookhteenamma*, the defendants managed the vatan till 1882, in which year the plaintiff, having attained his majority, wished to manage it himself, but was opposed by the defendants. The services in connection with the vatan had ceased in 1864. The plaintiff therefore brought the present suit in 1884 to recover the vatan, with mesne profits. The defen- dants set up the *karapatra* and the *sanaad* by which they contended they had acquired the hereditary right to keep the whole vatan in their possession and management and to take one-third of the income derived from the same. The plaintiff impeached these documents as forgeries, and contended that in any case they were not binding on him, as it was not competent to his ancestor to make a permanent alien- ation of the vatan or its management beyond his life-time. The Court of first instance awarded the plaintiff's claim. On appeal by the defendants to the High Court, *Held*, reversing the decree of the lower Court, that the rights of the defendants under the *karapatra* were in force and binding on the plain- tiff notwithstanding that the services incidental to the vatan had ceased. That document had been executed not merely to create a permanent office for the services of which a certain share in the vatan was allotted as remuneration, but it proceeded on the special service to be rendered to the family of the grantor by the recovery of the vatan itself. In other words, the per- formance of the service as *mutalik* was not the entire consideration or motive for the grant, nor did it expressly provide for the grant ceasing when the services should be no longer required. *Held* also that the *sanaad* purported to exclude the grantors' successors in the vatan entirely from the management of the vatan, and to vest it in the permanent *mutalik*, and, whilst leaving them as the absolute owners of the vatan, and to vest it in the permanent *mutalik*, this was virtually to attach an incident to the vatan inconsistent with its nature which the plaintiff's ancestor was not competent to do. The parties were entitled to the joint management of the vatan as tenants-in-common in respect of their undivided shares. *BHIMAJI BATVAT v. GHIRAJI TRIMBA- DESAI* . . . I. L. R., 14 Bom., 82.

8. Appointment of deputy—*Power of holder of tenure.*—The holder of an heredi- tary office, such as a *deshpande* vatan, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend be- yond the life of such incumbent. *RAVI RAGHU- MATI v. MAHADEVAY VISHVANATH* . . . 2 Bom., 237

9. Death of grantees without heirs—*Custom—Reversion of jaghir to grantor.*—Where the custom of the country was found to be that on the death of a service tenure-holder without heirs his jaghir reverted to the grantor, the right of the grantor to the land on the death of the grantee without heirs was recognized. *KAMRASSURMATH SINGH v. HURO LAT SINGH* . . . 6 W. R., 87

10. Abandonment of tenure—*Mookhtenamma abandoning tenure—Forswearing of property for rebellion.*—A *mokuridar*, having fled

SERVICE TENURE—continued.

Female can inherit a majumdar vatan. The Collector can assign the whole proceeds of a vatan to the officiating person who is entitled to retain such proceeds as his remuneration. *Bai Suraj v. Gov-ernment of Bombay.* *Barubhai Khushaldas v. Bai Suraj* . . . 8 Bom., A. C., 83

6. Right to officiate in proportion to shares held in vatan—*Discission of Collector—Act XI of 1843.*—The plaintiff had two shares, and the defendant one, in a patilki vatan. In an action brought by the plaintiff to establish his right to officiate twice as often as the defendant,—*Held* that the plaintiff was not necessarily entitled to such right, though the fact of his holding two shares in the vatan might be a reason for the Collector to exercise his discretion under Act XI of 1843 (when it was in force) in favour of the plaintiff by assigning to him a longer period of management than to the defendant, in the event of two shares not agreeing as to the person to officiate. *BHAVANI MADASHIV v. BHAVANI MADASHI* . . . 12 Bom., 232

7. Power of a vatanadar to create a perpetual mutalik—*Discussion of successors from entire management of vatan—Karapatra grant, Construction of—Vatan—Sanaad, Construction of.*—The creation of a perpetual mutalik, with a certain share of the vatan as writ on account of mutalik, is within the powers of a holder of the vatan for the time being, more especially when it is done for good and valuable consideration passing to the vatan. But it is not competent to him to exclude his successors from the entire management of the vatan. In 1825 the ancestor of the plaintiff, who was a desai and the last proprietor of the deshai vatan of Tegur, granted to the ancestor of the defendants a karapatra whereby, in consideration of the services the latter was to render to the former in recovering the vatan, the defendants' ancestor was to enjoy one-third of the vatan as vatan mutalik from generation to generation. Subsequently the plaintiff's ancestor granted to the defendants' ancestor a sanaad which referred to the karapatra already executed, and vested the entire management of the vatan in the defendants' ancestor from generation to generation after the said vatan was recovered. After protracted legal proceedings, in which the defendants' ancestor assisted the plaintiff's great-grandfather, the vatan was recovered in 1839. In 1846 the defendants' ancestor actually entered into the management, and continued to manage till 1850, in which year Government put the vatan under attachment. From 1850 to 1864 he remained out of possession. In consequence of the attachment. In 1864 Government removed the attachment and restored the vatan to the plaintiff's father. On being asked by the Collector to appoint some one to take possession and management of the vatan, the plaintiff's father wrote a reply on the 15th July 1865 that he had appointed the defendants' father to manage it, and the defendants' father continued to manage it till his death in 1880. On his death, a fresh mukhtearnama was executed to the defendants 1 and 4 by the mother of the plaintiff, who was then a minor.

8. Appointment of deputy—*Power of holder of tenure.*—The holder of an hereditary office, such as a deshpade vatan, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent. *RAVI RAGHUNATH v. MAHADRABAI VISHVANATH* 2 Bom., 237

9. Death of grantee without heirs—*Custom—Reversion of jaghir to grantor.*—Where the custom of the country was found to be that on the death of a service-tenant-holder without heirs his jaghir reverted to the grantor, the right of the grantor to the land on the death of the grantee without heirs was recognized. *MAHARAJA SINGH v. HUNO LAL SINGH* . . . 6 W. R., 87

10. Abandonment of tenure—*Mokhteardar abandoning tenure—R forfeiture of property for rebellion.*—A mokhtardar, having fled

SERVICE TENURE—continued.

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10. Abandonment of tenure—*Mokhteardar abandoning tenure—R forfeiture of property for rebellion.*—A mokhtardar, having fled

SERVICE TENURE—continued.

renders the title of the holder in possession under-puttable by the holder's heirs, assuming that there is no special family custom operating apart from the law which prescribes service lands for the intended tenants on which family property can usually be alienated. *Madanani v. Advaita Bhagwant Dhanalaksh*. I. L. R. 8 Bom. 198.

See VAKKARI ILLAMMAL v. LALITH AKHAI [I. L. R. 9 Bom. 285]

and abandoned his tenure appertaining to a rebel's estate which was confiscated by Government, was held not entitled to recover the tenure on the ground that the mortgagor was not an absolute tenant, but one on condition of service to be rendered to the former proprietor whose estate has been confiscated for rebellion. *Pratap Singh v. Ram Sankar Singh* [W. N. 1804, 5]

his own life-interest. *SUNDARAMATHI NEEDAI v. VALLABAYAKKI ANNAL*. 1 Mad. 465
2 Mad. 341
See VISALAYA v. RAMAJAGI

Interest of one of

cannot be bequeathed to one or more of the other co-partners, as the estate held by each partner is only a life interest, subject to the right of the Collector, under Act XI of 1813, to assign a life tenure from the rent and profits for the maintenance of the person appointed to conduct the duties of the office. *PHILLIPPA v. MANIKAYA*
[3 Bom. A. C. 128
13, 18
Address posted]

advise possession for twelve years during the lifetime of one holder of service lands as a bar to succeeding holders (2) In the absence of fraud and collusion, judgment against one holder of service lands is *res judicata* as regards a succeeding holder. (3) Such lands become alienable when the holder is a concurrent family custom operating similarly to keep the estate together. Such a custom may continue and may singly bind the hands of the successive holders of the property after the former restriction has failed or been removed. The abolition of the public duty does not alter the nature of the estate. If the family custom forbids alienation before the public duty is abolished, this subsequent abolition or discharge

tion of the estate necessarily fails, and the lands become subject to the ordinary law of descent and disposal. *See* *W. N. 1887, 1—(1)* Lands with respect to which a summary settlement under Bombay Act II and VII of 1803 has been effected are wholly exempt from official objection. (2) Where service lands, or what were divided service lands have been aliened, and at a later period the service has been established or abolished, this subsequent abolition or discharge

the court after *B. D.'s* death. *B. D.'s* estate had been attached by Government in 1844, but in 1845 or entering it in the name of A. and refusing to recognize the interest of X. In 1805 the Government restored the rest of the estate, again acknowledging A. as the holder, the agreement with her being under "the Gordon Settlement." In 1805 A. mortgaged two villages (part of the estate) to one S. (father of the defendant), who was the tenant of A. for Rs. 9,000, which had been advanced by him to A. while the estate was under sequestration. Possession was given to S. He accordingly brought a suit against her for the revenues of 1803-70 and obtained a decree in execution of which he sold the villages and bought them at the sale. In 1878, however, the Collector cancelled the sale under the Vatan Act (XV of 1874). In 1873 S. obtained a further decree against A. for the revenue of two years (May 1874 to 1875). In 1873 S. obtained a

At that time and until 1850, X and S were on friendly terms, the two having joint possession of the mortgaged villages, X being subtenant to S. In 1850 S. taking money, and S. taking money, if not

SERVICE TENURE—continued.

all, of the revenues of the two villages. In 1850 S died, and his sons, the defendants, quarrelled with *P*, who in 1881 obtained an order from the Collector directing the village officers to pay the revenues of the two villages to him, and not to the defendants. This order was subsequently set aside, and thereupon *P* in August 1887 filed the present suit to have the mortgage executed by *K* to *S* on the 15th September 1865 declared null and void and to recover possession of the two villages. In the alternative, he prayed for redemption of the mortgage. The defendants pleaded (*inter alia*) that the villages were not vatan; that they were entitled to the villages by reason of adverse possession; that the suit was barred by limitation; and that the plaintiff was estopped from disputing the mortgage, etc. *Held* (1) on the evidence that the property in question was part of a desai vatan, and as such was held on service tenure. (2) That the property in question was subject to the rule which was in force in 1865, when the mortgage to *S* was executed, viz., that alienation by way of mortgage of any portion of vatan property had no force beyond the life of the vatanadar who mortgages it. (3) That the plaintiff having been declared to be the legitimate son of *B D*, he was from the date of his birth in 1848 the rightful vatanadar, and *K*, unless she was manager acting on his behalf, was a trespasser. The fact that Government had entered the vatan in her name, and that the "Gordon Settlement" was effected with her, would not make her vatanadar as long as *B D*'s son (the plaintiff) was alive. (4) That if *K* was a mere trespasser, then the plaintiff's right to recover the lands free from incumbrance, on the ground that he was the vatanadar, had been lost by limitation, and the property had become *K*'s by adverse possession. The plaintiff, however, as her step-son, was her heir. The mortgage was proved and was binding on him as heir, and as such he had a right to redeem it. *SWAMINATH v. PADARA BIN BHUTAKARAY* [I. L. R., 18 Bom., 22

16. *Vatan service*
*Land, Alienation of—Gordon Settlement in the Southern Maratha Country—Effect of the application of, to service vatan—Alienability of such vatan where services have been dispensed with—Vatandars (Bombay) Act III of 1874—Bom. Reg. XVI of 1827—Bom. Acts II and VII of 1863—*R* and his sons were members of an undivided family. In execution of certain money-decree passed against *R*, the lands in dispute were sold to various persons from whom they were afterwards bought by the defendant. In 1875 *R* died, and in 1887 his sons and grandsons filed this suit against the defendant to recover the lands. They alleged that the lands were service vatan lands and inalienable, and that the execution-sales affected nothing except *R*'s life-interest, and that on *R*'s death they (the plaintiffs) became entitled. They also contended that, even if the Court should find that the lands were not service vatan lands, they were at all events ancestral property, and that the plaintiffs' interests therein were not affected by execution-sales under decrees to which they were not parties. *Held*, on the evidence admitting the judge-*

SERVICE TENURE—continued.

ment of the Court below, that, with the exception of two fields, none of the lands in question were service vatan lands. *Held* further that the two fields which were so excepted, and which had been the subject of a "Gordon Settlement" in 1864, remained inalienable vatan lands, although the services in respect of them had been dispensed with. The settlements made under Bombay Acts II and VII of 1863 made the lands therewith transmissible as the property of the holder. *Radhakshi v. Amantay*, I. L. R., 9 Bom., p. 215. What is termed a "Gordon Settlement" was an arrangement, entered into in 1864 by a Committee, of which Mr. Gordon, as Collector, was Chairman, acting on behalf of Government, with the vatandars in the Southern Maratha Country, by which the Government relieved certain vatandars in perpetuity from liability to perform the services attached to their offices in consideration of a judi or quit-rent charged upon the vatan lands. These settlements were given binding legal effect by cl. 3 and 3 of s. 15 of Bombay Act III of 1874. At the time when these settlements were made, lands were alienable by Bombay Regulation XVI of 1827 (as construed by the Courts) beyond the life of the actual incumbent, and the Gordon Settlement of 1864 (unless where it was otherwise specially provided by a particular settlement) was not intended by either party to those settlements to convert the vatan lands into the private property of the vatanadar with the necessary incident of alienability, but to leave them attached to the hereditary offices, which, although freed from the performance of services, remained intact, as shown by the definition of hereditary office in the declaratory Act III of 1874. *APPAJI BAVJI v. KRSHNA SHAMRAY*, KRSHNA SHAMRAY v. APPAJI BAVJI. I. L. R., 15 Bom., 13

17. *Cessation of services—Land held on quit-rent—Waver of performance—Lapse of tenure.*—As an ordinary rule, if land is given on quit-rent, or no rent at all, in consideration of services to be performed, the tenure would lapse when those services ceased. *Quere*—When no service has been required or performed for a long series of years, and the tenure has been allowed to be held at a quit-rent, or no rent at all, whether there has not been such a waiver of service as puts it out of the power of the grantor to resume the tenure, simply on the ground that he has now no need of the service for which the tenure was originally created? *Quere*—Whether, when land is given at a quit-rent, on condition that the grantee shall aid the grantor in repelling the attacks of his enemies or for any other particular purpose, while the grantee is willing to render those services, the grantor can put an end to the contract by saying that he has no enemies to repel, and therefore no need of the grantee's further services? *XIL-MONEY SINGH DEO v. SHRO DRAVAR* [W. R., 1884, 324

18. *Value.*—A cessation (even though sanctioned by the Government) of the performance of the duties attached to an impartible vatan does not alter the nature of the estate and make it partible. *SAVINIAVA v. AZIMDAR*. 13 Bom., 224

SERVICE TENURE—continued.

Having been effected, the planting obtained a fourth share within which fell the assigned land. Upon

more than 100,000 people in the United States, and the number is growing. The disease is caused by a virus that is spread by mosquitoes. It is a serious illness that can lead to death. The Centers for Disease Control and Prevention (CDC) estimates that about 100,000 people are infected each year, and about 10,000 die. The disease is most common in the tropics, but it has spread to other parts of the world. It is a major public health problem.

plaintiff could
 defendant's
 from the defendant
 him by all the shareholders, when they were joint, as
 a consideration for those securities.
 & Kuala Lumpur
 20 W R, 389

24. 24. - Jurisdiction of Civil Courts - Revenue
Bom Act VII of 1863, s. 2 -

[illegible]

Government as to the resumption of service by
retired men and by the work of general staff of
under art. 3, cl. 1 of the act, was not a con-
dition precedent to their production in an estate and
actions in respect of such lands. *Przemyslawski*
v. *Przemyslawski* & *Gorsuchov* of *Donau*
[8 Bom. & C., 185]

26

into by treaty between the British government and the Hays (cf. Satawa in 1919, and the terms granted separately with the general Satawa jubiliaries in 1890).

[illegible]

political considerations, and it is not without reason that the common-law doctrine of *ultra vires* is not applied to the decision-making process of the executive branch. The executive branch is not a political body, and it is not subject to the same political constraints as the legislature. The executive branch is a part of the government, and it is not subject to the same political constraints as the legislature. The executive branch is a part of the government, and it is not subject to the same political constraints as the legislature.

The whole estate passed to the persons whom the testator had appointed as his heirs.

19 _____ Impassible rates

—*Discrimination of services.*—*Discrimination of services attached to an impartible estate does not affect the nature of the estate and make it partible.*—*LAMBAD THINDAR & KENTAKTHAD LAMBADTHAD*

L. L. R., 10 Bond, was

20, ———— Commutation of
allowance—Right to hold as
Descriptive—Designation of

The plaintiff used the defendant's father and the Collector of Bains for a share of the allowance; but as the whole of it had been received by the Collector to the defendant's father as the officiating dealer, the court was obliged under Act XI of 1843 in 1860 to award him the sum of Rs. 200, which was a small amount, and was to be annually payable over and above arrears of interest.

the 1990s, the number of people in the world who are illiterate has increased from 1.2 billion to 1.5 billion. The number of illiterate people in the world is projected to increase to 1.7 billion by the year 2015. The number of illiterate people in the world is projected to increase to 1.7 billion by the year 2015.

[illegible]

trial to hold the money, exclusively as a personal allowance to himself. *MAYNARD, ADMORATOR & SUTHERLAND PROSEUT.* I. I. R., 8 Bom, 426

the holder no exemption from the payment of rent
when the notice is no longer required or performed.
CUMMINS & PATRICK, Notary Public for the State of
[W. H., 1864, Act X, 37]

23. ———— Remission of Sentence.—
 When where service has been all allotted to the
 [§] W. H. P. C. 211

[illegible]

SERVICE TENURE—continued.

the Government at its discretion for political reasons recognized as the grantee, without its being competent to any Court of law to question the decision of the executive authority in the matter. SUTAN SANI v. AJMODIN, SUTAN SANI v. BEGUMABEE.

[1. L. R., 17 Rom., 431
L. R., 20 I. A., 50

24. _____ B h o o m e a r
teuues.—Bhoomaeas are bound to render certain
 customer services, but their lands are not resumable.
 Gopalanath Tewahre v. Bhooiah Oranoo
 [6 W. R., 137]

28. _____ Power of Government to resume individual rights—Government

has no power to resume majority status where it dispenses with the services in respect of them, if the holders of such status are ready and willing to perform such services. GOVERNMENT OF BOMBAY v. DADONAH PARMANANDS. 5 Bom., A.C., 202

29. Services dispensed—Right of zamindar to resume.—A zamindar

... upon condition of their rendering personal services whenever such services are dispensed with. SANMAYASI KHANU v. ZAMINDAR OF SATUR. FAKIR KHANU v. ZAMINDAR OF SATUR. I. T. R., 7 Mad., 268

30. _____ Suit for enhance-
ment of rent—Right to resume when services not

required—Evidence.—It sued *S* to recover instalments of *kist* due on the ground that *S* held a village on service tenure (granted on condition of paying *krist* and performing service); that the services of *S* were not at present required, as the Court of Wards had assumed the management of the estate of *R*;

that the assessment had not accordingly been increased; and that the decision not to accept it was at least an enhanced rate and to execute a counterpart. So that he had on service tenure, and set up a right from one of the ancestors of R. *Heid* (that, as

[illegible]

31. London and
KADA NARAYANA . I. L. R., 3 Mad., 367
undue rate claimed. SIVAKANAZH v. JAGA-
certain service, and that it was entitled to the
man not granted in perpetuity burdened with a

rent—Resumption—Onus probandi.—In a suit brought in 1866 by a zamindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money-rent being also reserved, it appeared that in 1863 the right

[illegible]

SERVICE TENURE—continued.

was, however, given to him at the same time. *Held* that the plaintiff was not precluded by any implied contract from increasing the rent; and that the burden of proving the plea that the plaintiff was not entitled to eject lay on the defendants, and had not been discharged. MANADEVIC, VIKRAMA

32. Grant of service
duties rent-free—Assessment of rent by settlement
 officer when service no longer required.—Bum. Act
 VI of 1862.—The talukdars settlement officer having
 assessed rent-free land, on the ground that it had

[illegible]

33. Lands held on long-term lease at will on reasonable notice—What amounts to reasonable notice—

[illegible][illegible]

which had been served were insufficient. NARASIMHA VENKATAGIRI RAJAH I. T. R., 23 Mad., 262 See UNDE RAJAH RAO BOOMBAYANG BABA.
DR. N. PRABHASAAY VENKATADRY NAIPOO
[7 Moore's I. A., 128

34. Jagir granted
to a govt or village headman—Assumption by
Zamindar—Liability to ejectment—Notice to quit.
—A service tenure created for the performers of
services, private or personal, to the zamindar may be
terminated by the zamindar when the services are no
longer required.

Երբ որ Երեմիայի աստիճանը Երեմիայի աստիճանը
 Երբ որ Երեմիայի աստիճանը Երեմիայի աստիճանը
 Երբ որ Երեմիայի աստիճանը Երեմիայի աստիճանը
 Երբ որ Երեմիայի աստիճանը Երեմիայի աստիճանը
 Երբ որ Երեմիայի աստիճանը Երեմիայի աստիճանը

[illegible][illegible]

SESSIONS JUDGE—concluded.

See CASES UNDER VERDICT OF JURY—GENERAL CASES.
See CASES UNDER VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

Commitment to—

See CASES UNDER COMMITMENT.
See CRIMINAL PROCEEDINGS.

[I. L. R., 3 All., 258
B. I. R., Sup. Vol., 750
I. L. R., 8 Bom., 312
I. L. R., 16 Bom., 200
I. L. R., 17 Mad., 402

See CASES UNDER MAGISTRATE, JUDICIAL
TION OF—COMMITMENT TO SESSIONS
COURT.

Duty of—

See PLAIDER—APPOINTMENT AND APPEAR-
ANCE . . . I. L. R., 23 Cal., 493

See REFERENCE TO HIGH COURT—CRI-
MINAL CASES . . . 10 W. R., Cr., 50
[I. L. R., 13 Mad., 343
I. L. R., 25 Cal., 555
4 C. W. N., 683

See VERDICT OF JURY—GENERAL CASES.
I. L. R., 19 Bom., 735

Obligation to form independent
opinion on case—*Opinion of committing Magis-
trate, Reference to, by Sessions Judge in his judg-
ment.*—On a case the decision of which is vested by
law in him sitting with assessors, a Sessions Judge is
bound to form his own opinion, aided by the assessors
indeed, but quite independent of any expression of
opinion on the part of the committing Magistrate.
The Judge's reference in his judgment to the opinion
of the committing Magistrate was held to be wholly
irrelevant and wrong. *DEVAN SING v. QUEEN*.
Express . . . I. L. R., 22 Cal., 805

SESSIONS JUDGE, JURISDICTION

OF—

See BAIL . . .

I. L. R., 1 All., 161
[I. B. L. R., A. Cr., 7
24 W. R., Cr., 7, 8

See CHANGE—ALTERATION OR AMEND-
MENT OR CHARGE . . . 25 W. R., Cr., 8
[7 C. L. R., 143

I. L. R., 8 All., 665
I. L. R., 12 All., 551

See COMMITMENT

[I. L. R., 13 Cal., 121
I. L. R., 10 Bom., 319
I. L. R., 8 All., 14
I. L. R., 15 All., 205
I. L. R., 23 Cal., 350

See CASES UNDER CRIMINAL PROCEEDURE
CODES, ss. 436, 438.

SERVICE TENURE—concluded.

services to be performed by the landlord were personal
services only to the Rajah. *NIRMALAY SINGH (No
2) v. GOVERNMENT* . . . 18 W. R., 321
S. C. in High Court . . . 6 W. R., 121

41. Forfeiture of tenure—*Alien-*

ation without grantor's consent.—In a suit to obtain
possession of lands which were found to have
been held of plaintiff and his ancestors by defendants
and their ancestors upon a service tenure, but which
the grantees alienated to strangers, without any
acquiescence on the part of the grantor, and then
ceased to perform the services, it was held that the
defendants had forfeited their right to hold the land
at all. *RAJMOHAR CHOKKEMBERTY v. CHANDER-*
NATH SINGH . . . 10 W. R., 280

42. Refusal to per-

form services—*Ejectment.*—A distinct refusal by a
tenant to perform services incidental to his holding
renders him liable to ejectment. *HUNNOGOND*
KAHA v. RAJAGUNO DEY . . . I. L. R., 4 Cal., 67

43. Tenure reasonable

Notice to surrender.—Where land
held on service tenure is reasonable at the will of the
grantor, the holder cannot be ejected before a reason-
able notice to surrender the land has been given.
LAKSHMI v. CHANDRI . . . I. L. R., 8 Mad., 73

SERVICE UNDER EAST INDIA COM-
PANY.

See DOMICILE . . . I. L. R., 4 Cal., 108

SESSIONS CASE.

See CRIMINAL PROCEEDURE CODES, ss. 436,
438 . . .

I. L. R., 1 All., 413
[I. L. R., 4 Cal., 16
7 C. L. R., 168
I. L. R., 2 All., 570
21 W. R., 41

See CRIMINAL PROCEEDURE CODES, s. 437.
[11 Bom., 98
12 Bom., 1

SESSIONS JUDGE.

— Case heard by—

See CRIMINAL PROCEEDINGS.

[I. L. R., 6 Cal., 96
I. L. R., 20 Mad., 445
I. L. R., 22 Mad., 15
I. L. R., 17 All., 36

See REFERENCE TO HIGH COURT—CRI-
MINAL CASES . . . 7 N. W., 211
[20 W. R., Cr., 50

I. L. R., 2 All., 771
14 W. R., Cr., 25

6 C. L. R., 245
I. L. R., 8 Cal., 875
I. L. R., 9 All., 362
I. L. R., 10 All., 146

I. L. R., 23 Bom., 696
I. L. R., 27 Cal., 295
4 C. W. N., 683

I. L. R., 23 Cal., 249, 250

SESSIONS JUDGE, JURISDICTION OF

—continued.
personant in of a witness before a Registrar of Assur-
ances under s 93 of the Registration Act (11) of
1860) *QUEEN v. SHROODAL DAS*
[6 B L R, 11 B, 693; 15 W. R., Cr., 58
Order of Magistrate attach-

2. 219 of the Code of Criminal Procedure, 1861
Hennovath Choudhary & Hazkenah Choudhary
Hox
16 W. R., Cr., 1

3. Criminal Proce-
dure Code, 1861, s 319—*Appeal from Magistrate's*
order. *Magistrate* had no jurisdiction
to hear an appeal from the order of a Magistrate.
under s. 319, Ch XII of the Criminal Procedure
Code, 1861, and that the object of the chapter
was to prevent breach of the peace likely to be
occasioned and not the adjudication of title. In the
matter of the petition of Dutt Naya Mish
[1 Agre, Cr., 29

4. Appeals from sentences of
Justices of the Peace acting under Act I of
1858.—The Sessions Court has jurisdiction to hear
appeals from the sentences of a Justice of the Peace
acting under the Merchant Shipping Act (1 of
1850) In the matter of the petition of L. A. V.
[3 Mad., 473

5. Offences under Penal Code,
s 400, and under s 29, Act V of 1861.—
Power of Sessions Judge after acquittal on former
charge—Where an accused was charged before the
Sessions Judge under both s 400 Penal Code
and under the special law, s 29, Act V of 1861, and
was acquitted under the former section it was
held that the Sessions Judge could not convict
under the latter law, as the Magistrate alone had
jurisdiction to convict under that law. *QUEEN v.*
Hennovath Choudhary [10 W. R., Cr., 36

6. Power of Sessions Judge to
add charge and try it—*Addition of charge*
triable by any Magistrate—Criminal Procedure
Code, 1852, s. 29—subject to the other provisions of

it contains as to the order Courts does not cut down or
limit the jurisdiction of the High Court or the Court
of Session. Three persons were jointly committed
for trial before the Court of Session, two of
them being charged with capital homicide not
amounting to murder of 7 and the third with abet-
tment of the offence. At the trial the Sessions
Judge added a charge against all the accused of
causing hurt to C, and convicted them upon both
the original charges and the added charge. The
Attorney General moved for a writ of habeas corpus
or immediately after the attack which resulted in
the death of C. Held that the Sessions Judge had
power, under s. 29 of the Code to try the charge.

SESSIONS JUDGE, JURISDICTION OF

See CRIMINAL PROCEDURE CODES s 437
[1 L. R., 12 Cal., 622
1 L. R., 8 All., 62
1 L. R., 12 All., 434
1 L. R., 14 Mad., 334
1 L. R., 23 Cal., 673
1 L. R., 27 Cal., 658

See CRIMINAL PROCEDURE CODES, s 481
[1 L. R., 14 All., 364
See CRIMINAL PROCEDURE CODES
[1 L. R., 17 All., 36
See CASES UNDER DISCHARGE OR AC-
QUITTAL

See OFFENCE RELATIVE TO DOCUMENTS
[1 L. R., 13 Mad., 54
See INFORMATION Schools Act, 1897
[4 C. W. N., 325
See INFORMATION ACT 1817 s 81 (1860,
s. 83)
G. D. L. R., 692, 693 note

See SECTION FOR PROSECUTION—POWER
TO GRANT SAVATRY
[8 Bom., Cr., 126
1 L. R. 3 Bom., 284
1 L. R., 3 All., 205
1 L. R., 10 All., 583

See SECURITY FOR GOOD BEHAVIOUR
[34 W. R., Cr., 10
1 L. R., 20 Cal., 165

Offence under Bom. Mag.
XVII of 1897, s 16—Criminal Procedure Code
1860.—An offence under s 16, Regulation XVII of

Offence under Opium Regu-
lation s 116
[8 Bom., Cr., 116

Offence under s 23, Railway
Act (XXVI of 1851)—*Offence for first trial*.—
A railway watchman was charged before a Head
Assistant Magistrate with an offence under s. 26 of
Act XVII of 1851. That charge was dismissed, but
the same was before ordered a fresh trial. Held that in
the case the Sessions Judge acted without jurisdiction.
[8 Mad., Ap., 41

Offence under Registration
Act (XX of 1860), s. 95—*Allegation of false per-
sonation of witness before Magistrate*.—The Sessions
Judge had jurisdiction to try a case of abetting false

SESSIONS JUDGE, JURISDICTION OF

SESSIONS JUDGE, JURISDICTION OF

13. — Power to give judgment on evidence partly recorded by predecessor—*Criminal Procedure Code, 1872, s. 328.*—The power given by the Criminal Procedure Code to a Magistrate to pronounce a judgment upon evidence partly recorded by his predecessor and partly by himself does not extend to a Sessions Judge. *TARADA BATADV v. QUEEN*. I. L. R., 3 Mad., 112

assuming that he had power to add it. *QUEEN-EMRESS v. KIRARGA*. I. L. R., 8 All., 665

14. — Power in regular appeal—*Insufficient evidence—Acquittal.*—If the evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted, he ought to acquit them. In the matter of the petition of KIRNAT MUTTAN. KIRNAT MUTTAN v. JAMES MUTTAN [I. L. R., 33: 20 W. R., Cr., 13

10. — *Criminal Procedure Code, 1872, s. 231—Conviction on fresh charge in support of which there was no evidence before Magistrate.*—R., having been committed by a Magistrate for trial by a Sessions Court on a charge, under s. 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty, on his trial, to the charge on which he was committed. Upon the application of the Public Prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge under ss. 109 and 201 of the Penal Code of abetting C, a female co-prisoner charged with having assisted in burying the body of the murdered person, required R to plead to the charge, and, having tendered a pardon to and examined C as a witness, convicted and sentenced R to two years' rigorous imprisonment. Held that, as there was no evidence before the Magistrate to support the charge against R framed by the Sessions Judge, the action of the Judge was *ultra vires* and the conviction on the added charge illegal. Held also that, inasmuch as the Sessions Judge considered R more culpable than C, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an enquiry as to whether there was ground for a more serious charge against R. *Sembie*—The object of resitting a Sessions Court from taking cognizance of any offence (except as provided in ss. 455, 472, 474 of the Criminal Procedure Code), unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary enquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him and enable him to make his defence. *MUTTAKAT KOVINGATHA RAYA VARMA RAYA v. QUEEN*. I. L. R., 3 Mad., 351

15. — Power to suspend sentence. ANONYMOUS. A Sessions Judge has no authority to suspend his own sentence. ANONYMOUS. 4 Mad., Ap., 2

11. — Trial without committal by Magistrate—*Witness sent up with conditional pardon.*—Held that a Sessions Judge acted irregularly in at once trying and convicting a person who had been granted a conditional pardon by the Magistrate, and who had been sent up to the Sessions Court as a witness for the Crown. Such a course was held to be a material irregularity under s. 439 of the Code, and the Sessions Judge was directed to order the Magistrate to commit the accused to the Sessions for a fresh trial after hearing his defence and examining his witnesses. *QUEEN v. BIRRO DASS* [19 W. R., Cr., 43

16. — A Sessions Judge has no power to suspend a sentence in any case unless there is an appeal. ANONYMOUS [5 Mad., Ap., 1

12. — Order for re trial on appeal—*Criminal Procedure Code, 1872, s. 250, amended by s. 28, Act XI of 1874.*—It is competent to a Court of Session under s. 280 of the Criminal Procedure Code as amended by s. 23, Act XI of 1874, to order a re-trial of a case which is before it on appeal. In the matter of SHEER MAHOMED 2 C. L. R., 511

17. — Power to prevent prisoner from appealing—*Right to appeal.*—It is not the province of the Sessions Judge to decide whether a prisoner has a right of appeal or not; he is bound to allow a prisoner, whose conviction he has confirmed, to execute a vakalatnama to appeal. *QUEEN v. VAIZAPUR GATNDAN*. 1 Mad., 4

13. — *Alteration of sentence in appeal—Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code (1893), s. 423.*—A Sessions Judge has no power to enhance a sentence in appeal by altering a sentence of fine into one of imprisonment. *QUEEN-EMRESS v. DARSANG DADA*. I. L. R., 18 Bom., 751

18. — Mitigation of sentence without appeal.—Held that a Sessions Judge had no power to mitigate a sentence passed upon a prisoner who has not appealed to him. *RAG. v. MUTTA NANA*. 5 Bom., Cr., 24

19. — Power to sentence on appeal from decision of Magistrate—*Committal of sentence.*—A Sessions Judge cannot, on appeal from a Magistrate's decision, inflict a term of imprisonment in commutation of a fine longer than that which the Magistrate himself could have inflicted. *RAG. v. HARI BIN VITHORI* 1 Bom., 139

20. — Alteration of sentence in appeal—*Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code (1893), s. 423.*—A Sessions Judge has no power to enhance a sentence in appeal by altering a sentence of fine into one of imprisonment. *QUEEN-EMRESS v. DARSANG DADA*. I. L. R., 18 Bom., 751

21. — Trial without committal by Magistrate—*Witness sent up with conditional pardon.*—Held that a Sessions Judge acted irregularly in at once trying and convicting a person who had been granted a conditional pardon by the Magistrate, and who had been sent up to the Sessions Court as a witness for the Crown. Such a course was held to be a material irregularity under s. 439 of the Code, and the Sessions Judge was directed to order the Magistrate to commit the accused to the Sessions for a fresh trial after hearing his defence and examining his witnesses. *QUEEN v. BIRRO DASS* [19 W. R., Cr., 43

22. — *Alteration of sentence in appeal—Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code (1893), s. 423.*—A Sessions Judge has no power to enhance a sentence in appeal by altering a sentence of fine into one of imprisonment. *QUEEN-EMRESS v. DARSANG DADA*. I. L. R., 18 Bom., 751

23. — *Alteration of sentence in appeal—Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code (1893), s. 423.*—A Sessions Judge has no power to enhance a sentence in appeal by altering a sentence of fine into one of imprisonment. *QUEEN-EMRESS v. DARSANG DADA*. I. L. R., 18 Bom., 751

24. — *Alteration of sentence in appeal—Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code (1893), s. 423.*—A Sessions Judge has no power to enhance a sentence in appeal by altering a sentence of fine into one of imprisonment. *QUEEN-EMRESS v. DARSANG DADA*. I. L. R., 18 Bom., 751

25. — *Alteration of sentence in appeal—Enhancement of sentence—Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code (1893), s. 423.*—A Sessions Judge has no power to enhance a sentence in appeal by altering a sentence of fine into one of imprisonment. *QUEEN-EMRESS v. DARSANG DADA*. I. L. R., 18 Bom., 751

SESSIONS JUDGE, JURISDICTION OF

—continued.

who has appealed to the District Magistrate, in trials by the Magistrate of the district, or full power Magistrate, in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report. *See* *Chandran Durayadas* [6 Bom., Cr., 33]

27. — Power to call for and exa-

by a subordinate Magistrate where no sentence or order had been passed thereon by the immediate subordinate Court of the Magistrate. *See* *3 Bom., Cr., 1* *Bhaskar Kharan*.

28. — *Trial in cases committed by Magistrate—Objection that case was tried without*

complaint—A Court of Session cannot treat as a

[4 Bom., Cr., 35]

29. — *Objection to irregularity of proceedings—The fact of a commit-*

[13 W. R., Cr., 17]

30. — Power to quash sentence of Assistant Sessions Judge—*Sentence submitted*

Judge had Assistant at it, and the sentence of the Assistant Sessions Judge to

be illegal. See *Michael Taylor* [5 Bom., Cr., 9]

Judge is of opinion that the order of commitment about the annual Magistrate, be allowed move the High Court to annul the same under s. 113 of the Criminal Procedure Code. *Quere* *Michael Taylor* [4 N. W., 0]

32. — Power to annul conviction and sentence—*Office of Sessions Court and*

Magistrate—It is only when a Court order is made to a Court of Session convict a person of

12 *

SESSIONS JUDGE, JURISDICTION OF

—continued.

31. — Power to pass sentence of death—*Assay with murder—Offence before*

trial Code came into operation—In a case of affray

attended with murder, in which the offence was

committed before the Penal Code came into force,

it was held that a Sessions Judge had jurisdiction

power, under s. 4, Act VIII of 1862, to pass

sentences of death, instead of referring the matter

for confirmation of the High Court. Quere *14 W. R., Cr., 76*

32. — Amendment of sentence—

1561, s. 22—Held that an order of Sessions Judge,

by which he altered a conviction by the Assistant

Sessions Judge of "dacoity" to one of "robbery,"

was illegal, not being an amendment of a sentence or

order within the meaning of s. 22 of the Criminal

Procedure Code. Held further that, if the accused

was acquitted of "dacoity," he ought to have been discharged

confirming the sentence and to have left them to be

charged with and tried for "robbery." See *5 Bom., Cr., 23*

33. — Concurrent jurisdiction

Magistrate, under s. 21 of the Code of Criminal

Procedure, His proper course, if he thinks that an

illegal sentence or order has been passed by a full-

power Magistrate, is to make a report to the High

Court, which will then, if it thinks fit, call for the

proceedings. See *Chaitanya* [7 Bom., Cr., 73]

34. — Power to refer to High Court—*Unnecessary reference to High Court—*

111 W. R., Cr., 11

35. — Power to call for report from Magistrate—*Power to call for report*

from Magistrate—Power to call for report

from Magistrate—Power to call for report

from Magistrate—Power to call for report

from Magistrate—Power to call for report

from Magistrate—Power to call for report

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from Magistrate—Power to call for report

from Magistrate—Power to call for report

from Magistrate—Power to call for report

from Magistrate—Power to call for report

from Magistrate—Power to call for report

SESSIONS JUDGE, JURISDICTION OF

—continued.
should refer the case to the High Court. QUEEN v. ICHABUN DORRY . 4 W. R., Cr., 11
33. Power to quash proceedings of Magistrate.—The order of a Sessions Judge to quash proceedings held before a full-power Magistrate annulled as having been made without jurisdiction. REG. v. GOVINDA DIN BHABAI

REG. v. GOVAT LAKSHMAN . 5 Bom., Cr., 25
34. Power to quash illegal conviction.—Giving false evidence in judicial proceeding.—The offence of giving false evidence in a charge of a judicial proceeding is not cognizable by an Assistant Magistrate. A Sessions Judge on appeal can quash an illegal conviction by an Assistant Magistrate in such a case. QUEEN v. BERNABY SINGH . 8 W. R., Cr., 30
35. Power to annul conviction and order commitment.—Offences triable by Magistrate—Criminal Procedure Code (Act VIII of 1869), s. 435.—The Sessions Judge had no jurisdiction to annul a conviction and order a commitment for an offence triable by a Magistrate. S. 435, Act VIII of 1869, related to offences triable by the Sessions Judge. IN THE CASE OF WAZIR SINGH

QUEEN v. JETUN KHAM . 11 W. R., Cr., 45
36. Illegal conviction by Magistrate—Criminal Procedure Code, 1861, s. 435.—Where the Sessions Judge was of opinion that a subordinate Magistrate had convicted the defendant of an offence which the subordinate Magistrate had no power to try, the Sessions Judge might, under s. 435 of the Code of Criminal Procedure, 1861, annul the conviction and direct the commitment of the accused for trial. ANONYMOUS [5 Mad., Ap., 32
37. Order to cancel proceedings of Divisional Magistrate—Proceedings reviewing the calendars of subordinate Magistrate.—A Sessions Judge has no power to direct a Divisional Magistrate to cancel his proceedings reviewing the calendars of Magistrates subordinate to him. 7 Mad., Ap., 27
38. Power to direct Magistrate to commit to Sessions.—Conviction by Magistrate without jurisdiction.—Where a Magistrate has convicted and sentenced a prisoner of an offence which such Magistrate was competent to try, and the Sessions Judge considered the case so grievous that it should not have been disposed of summarily,—Held that such Sessions Judge was not competent to direct the Magistrate to commit the prisoner to the Sessions Court for trial upon the same charge. QUEEN v. HIDDUN KHAM [2 N. W., 285
39. Power to reverse order of Magistrate as to stolen property.—A Deputy Magistrate restored to an accused money found in his house along with stolen property, the prosecutor having failed to prove that the money was his. The

SESSIONS JUDGE, JURISDICTION OF

—continued.
Sessions Judge on appeal reversed that order, and directed the money to be made over to the prosecutor. Held that the order of the Sessions Judge was made without jurisdiction. QUEEN v. SHAN CHUN-DEE KAI . 9 W. R., Cr., 57
40. Conviction on confession before Magistrate after plea of not guilty.—A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate. QUEEN v. HUNSOOKH 2 N. W., 479
41. Power to interfere with order of acquittal.—Acquittal by Magistrate—Criminal Procedure Code, 1861, s. 435.—After an accused person had been acquitted under s. 255 of the Code of Criminal Procedure, it was not competent to the Sessions Judge to interfere under s. 435 of the same Act. REG. v. VENKUT NARAY . 9 Bom., 170
42. Power to order commitment.—Cases exclusively triable by Court of Session.—The Court of Session can only order the commitment of an accused person in cases exclusively triable by it. QUEEN v. SURETUL PERSHAD [5 N. W., 168
43. Power to commit to itself cases not triable exclusively by Court of Session—Criminal Procedure Code (Act X of 1872), ss. 231, 471, and 472.—A Court of Session had no power to commit to itself for trial a case not triable exclusively by such Sessions Court. The words "commit the case itself" in s. 471 of the Code of Criminal Procedure cannot (when read in connection with s. 231) be held to empower a Sessions Court to commit such a case to itself. IN THE MATTER OF KARESS v. FUTURE JYA KHAM [1. L. R., 4 Cal., 570
S. C. IN RE PATA IRAN KHAM . 3 C. L. R., 599
44. Criminal Procedure Code, 1861, s. 435.—Where a Judge, under s. 435 of the Criminal Procedure Code, had directed the Magistrate to commit certain accused persons, as also to take their defence,—Held that, as the Magistrate could not require the accused to produce evidence nor to make a defence, the Judge should not have included such instructions in his order of commitment, but that the order was not therefore invalid. 4 N. W., 50
45. False evidence.—The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. QUEEN v. HANAYAR [3 B. L. R., A. Cr., 35
46. Criminal Procedure Code, 1872, s. 472.—I made a complaint against S by petition, in which he only charged S with having committed offences punishable under ss. 193 and 218 of the Penal Code, but in which he also accused S of acts which, if the accusation had been true, would have amounted to an offence

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Constitution under

being officers triable by the subordinate Court. ■ W. R., Cr., 13

63 ————— Power of Joint Sessions —Criminal Procedure Code (Act 1 of 1972, 1973)

punishable under s. 466 of that Code with seven years imprisonment for the charges against him. The Magistrate inquired into the Penal Code, and directed his discharge. It then applied to the Court of Session to direct S. to be committed for trial on the ground that he had been improperly discharged, which the Court of Session refused.

100

commitment was not bad by reason that an offence under s. 103 of the Penal Code is not exclusively triable by a court of session. *Held also per STRAKIS*, that the Court of Session was competent, not-

withstanding, that I had only charged S with offenses under ss 103 and 218 of the Penal Code, to charge I with offenses under ss 103 and 211, if such offenses had come under the commandment. Charges & Latin

47
Criminal Pro-
cedure Code 1961, s 435 and s 459 - A Serious

person by the Magistrate, 329 notwithstanding
(disinterested KENT, J)
W B. 1884 Ct. 3
Quinn & Donovan

48. — charged by Magistrate — A Sessions Judge has dis-

40
 # BUREAU OF CHINA
 not be infer
 Bilingual
 SECTION OF
 2 W. H. C. 44
 Discharge of

accused on inquiry before Magistrate—Further in-
quiry.—When an inquiry has been made and the
accused is acquitted the case is closed, but cannot be
reopened and referred to the Court may order the
commitment of the accused, but cannot directly direct

Further inquiry
[3 M. W. 60]
"Legislative and
release" of account by Magistrate—Criminal
50.

Procedural Code, 1961 § 435 — Where a statement made in the words "and relevant" when introduced only to discharge a person accused of an offense not liable by him — *Held* that the Court of Criminal Appeal was competent under § 435, Code of Criminal Procedure, 1961 to set aside the conviction.

18 W. H. C. 47

of Criminal Procedure, after a Magistrate has dis-
charged an accus'd petn, or, after the Magistrate has

commit the accused person to the custody, in the
MATTER OF THE PETITION OF MEXICO ALL (HOW
DENT & SONS MOON HILL MEAN 1 W. H. C. 3

of the powers under Ch VIII of the Criminal Procedure Code and s 193 of the Criminal Code for inst. Hereafter by the Sessions Judge of Surat T. L. R., O Born, 352

55 Criminal Pro-
cedure Code, s. 259—"No evidence"—"Acquittal of
accused without taking opinions of assessors—The
words "there is no evidence" in s. 259 of the Code

of Criminal Procedure, 1987, cannot be extended to mean no satisfaction, but worthy, or considerable etc. But the third paragraph of the section means that, if at a certain stage of a session trial the Court is satisfied that a case is on the record and evidence is not required, it may not be necessary to call for evidence.

which, even if it were perfectly true, would amount to legal proof of the offence charged, then the Court has power, without consulting the master, to record a finding of not guilty. But where a Court so acts

only because it considers the evidence for the prosecution unsatisfactory, untenable, or inconclusive, it acts without jurisdiction and its order discharging the accused is illegal. If it is not illegal for want

of instance one such reason is a serious difficulty, which may or perhaps has not been caused a failure of justice will in the mean of s. 237 of the Code of Criminal Procedure. In the matter of the petition

SESSIONS JUDGE, JURISDICTION OF

—continued.

of Narain Dass, I. L. R., 1 All., 610, referred to.
[I. L. R., 10 All., 414

56. *Sanction to prosecute by District Judge—Trial by same Judge as Sessions Judge—Criminal Procedure Code (Act X of 1882), ss. 195, 487—Penal Code, s. 196.—*

A Sessions Judge is not debarred by s. 487 of the Criminal Procedure Code from trying a person for an offence punishable under s. 196 of the Penal Code, when he has as District Judge given sanction for the prosecution under the provisions of s. 195 of the Code of Criminal Procedure. *Madhuk Chander Mozumdar v. Novodeep Chander Punwih, I. L. R., 16 Cal., 121, overruled. Empress v. D'Silva, I. L. R., 6 Bom., 479, referred to. Queen-Empress v. Sarat Chandra Bhaknit . I. L. R., 16 Cal., 766*

57. *Criminal Procedure Code, ss. 193, 287, 288—Cancellation of conditional pardon to prisoner—Approver, Trial of—Proof of confessional statements of accused.—*

Several persons were charged with dacoity. While the case was pending, two of the accused made confessional statements; afterwards a conditional pardon was tendered to them, and they were examined as witnesses by the Magistrate and subsequently on behalf of the prosecution in the Sessions Court, to which the other accused were committed for trial. They there denied that they had been taken as approvers, whereupon the Sessions Judge placed them in the dock, called on them to plead, and permitted the depositions made by them before the Magistrate, but not their confessional statements, to be read to the jury. *Held* that the trial of the two persons, who had not been committed to the Sessions Court, was *ultra vires*. The proper course was to have treated the evidence given by them before the committing Magistrate as evidence in the case under s. 288 of the Code, and to have allowed the other accused to cross-examine them. *Per curiam*.—The Sessions Judge committed an irregularity in refusing to place on the record the confessional statements of persons whom he treated as accused. *Queen-Empress v. Rama Tripan I. L. R., 15 Mad., 352*

58. *Conditional pardon—Withdrawal of pardon and trial don to prisoner—Withdrawal of pardon and trial of jointly with other accused—Power of Sessions Court to try person not committed—Criminal Procedure Code, s. 193.—Two persons, J and U, were charged with the murder of U's husband, and in the course of the police inquiry made certain statements to the police. They were then sent up by the police to a Deputy Magistrate for inquiry. J made three statements on the 28th of February, the 1st of March and the 9th of March 1894, respectively, two of which were confessions, the third being a withdrawal of such confessions. U also made two statements on the 2nd and 9th of March, the first of which was a confession, and the second a withdrawal thereof. On the 27th of April U was tendered a pardon, and was thereafter treated as*

—continued.

an approver, in which capacity she gave evidence against J. J was then committed to the Court of Sessions to take his trial, U being sent up as an approver. In the Sessions Court U resiled from her deposition before the committing Magistrate, and was then and there treated as an accused person, and placed on her trial with the other accused and the deposition aforesaid was put in as evidence. Both accused were convicted mainly on their confessions, J of murder and U of abetment of murder. *Held* that the conviction of U was bad, the Court of Sessions having had no jurisdiction to try her, as she was never committed to that Court by any competent Magistrate. *Queen-Empress v. Jagat Chandra Mali [I. L. R., 22 Cal., 50*

59. *Powers of Sessions Judge on revision—Further enquiry—Power of Sessions Judge to direct—Criminal Procedure Code, ss. 224 of the Code charging the accused with offences under ss. 380 and 448 of the Penal Code, viz., theft in a building and criminal trespass. Having heard the whole of the evidence, he then acquitted the accused under s. 258 of the Code, and gave him sanction under s. 195 to prosecute the complainant then applied to the Sessions Judge to revoke that sanction. The Sessions Judge proceeded to consider the whole case, and finding that a proper inquiry had not been made and all evidence available not taken, and that, had this been otherwise, a Sessions case might have been established, directed the Magistrate to hold a further inquiry, and to proceed, in accordance with the result of such inquiry, either to commit the accused to the Sessions or grant the sanction, as the case might be. *Held* that the Sessions Judge had exercised a jurisdiction not vested in him by law. Acting as a Revision Court, he could send for the record for any purpose mentioned in s. 436, but he was not competent under s. 436 to direct a fresh inquiry, inasmuch as the accused had not been improperly discharged of an offence triable exclusively by a Court of Session, but had been acquitted of an offence within the Magistrate's jurisdiction. The Sessions Judge had in fact exercised the jurisdiction vested in him as an Appellate Court under s. 423, as if an appeal had been presented to him from an order of an acquittal; such powers in revision cases are only conferred on the High Court. *Bajamath Pandey v. Gauri Kanya Mandat . I. L. R., 20 Cal., 633**

60. *Sessions Judge's power to review his order in proceedings taken to revoke sanction.—A Sessions Judge, having once refused to revoke a sanction granted by a subordinate Court under s. 195 of the Criminal Procedure Code (Act X of 1882), has no jurisdiction afterwards to*

SESSIONS JUDGE, JURISDICTION OF

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review his order and set aside the sanction. An application to a Sessions Judge for rescission of sanction granted under s. 195 of the Code is a criminal proceeding in remission. Any order passed in such a proceeding is final, and cannot be reviewed or revised by him. *Queen-Empress v. Fox, I. L. R., 10 Bom., 176*, and *Miyah v. Toke Ram, I. L. R., 15 All. 61*, referred to. *Queen-Empress v. Ganesha Hanumanth I. L. R., 23 Bom., 60* Appeal from a

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after having evidence for the defence recalled. The Sessions judge considered the charges improper at such a late stage and ordered the Sessions judge had exercised jurisdiction conferred upon him by law, and that his order be set aside. *Daynath Gauri Kantia Mandai*, I. T. H. 30, approved of. *Queen Empress v. Hanu*, I. T. H. 23 and 229.

1	GENERAL CASES	•	•	65335
2	CHOSE-DECISIONS	•	•	65351

See COMPENSATION - CIVIL CASES.
[1 I. R., 18 Bom., 717
See EVIDENCE - CIVIL CASES - SECONDARY
EVIDENCE - LAYSTAMPED OR UNLAYSTAMPED DOCUMENTS
[5 H. L. R., 49.]

See ROAD CROSS ACT
[1. L. R., 4 Cal. 578
11 C. L. R., 140
SEE SMALL CASES COURT, PERMISSIVE
TOWNS-JURISDICTION-PART 072.
[1. L. R., 20 Cal. 627
1. L. R., 21 Cal. 418]

GENERAL CASTS

1. Maintaining issue of rebuff on
trial—Procedure—When a defendant raises a
 question of set off on the trial of that issue, he must be
 considered as pleading. JAYADANU DAS v. GUN
 [5 B. L. R. 689]
 As to how cases of set-off will be dealt with, see

2. Power of Revenue Court to
allow set off under Act X of 1869, s. 24—
and by principal against agent — A Revenue Court
1879, under the provisions of a 24, Act X of
1869, had jurisdiction to allow a set off for any
sums which the agent might otherwise have paid to his
principal directly or used for the benefit of his
principal with his sanction and authority. *Mohini*
Krupar Hoar Chowdhary v. Nolo Coomary Mission
[18 W. R., 339]

A - Written statement or report
-*III of 1859, s. 181* - Under s. 121, Act
III of 1859, s. 180 - Defendant, directors of sitting off
the claim of the plaintiff the amount of any
payments made by him to plaintiff's account, was
bound to tender a written statement containing the
particulars of the demand. *Nooky Chandra Hoy*
v. *Banerjee Late Moorakher*. 14 W. R. 473.

4 - Character in which claim is
made—*Civil Procedure Code, s. 111*—Willfully

63. Criminal Proce-
dure Code (Act of 1953), s. 356—Frequ. inquiring
after improper discharges of accused persons—
jurisdiction of Sessions Judge after acquittal—
Charles under ss. 303 and 147 of the Penal
Code—where brought by the police against certain accused
in the Court of a Deputy Magistrate, who took
all the evidence for the prosecution, but went on
further with passing any order of remission or
otherwise. His answer, considering the evidence
insufficient to support the charges, allowed them
to clear under ss. 305 and 147 of the Penal

CRIMINAL PROCEDURE ACT 1895, s. 155, 475—Order by
 Deputy Magistrate authorising prosecution—Com-
 plaint by Deputy Magistrate—Jurisdiction of
 Sessions Court to interfere—A Deputy Magistrate,
 having received the certain witnesses (who had given
 evidence before himself) and before two other Magis-
 trates on different occasions relating to charges of
 robbery and causing hurt) had witness committed
 to prison on one occasion or another, ordered them
 to be imprisoned for paying and bound them over to
 take their trial. The Sessions Judge set aside the
 order, deeming it undesirable that sanction to
 prosecute should be given under the circumstances.
 Held that, whether the Deputy Magistrate had
 intended to pass an order under s. 475 or to make a
 complaint under s. 155 (1) (b) of the Code of
 Criminal Procedure, the Bench as Judge had no power
 to interfere. *Queen Empress v. Awaraya*
 IL R., 23 Mad., 205

the accused had pleaded guilty at the trial, and no power to deal with the appeal except as Code (Act V of 1852) had no application. That section provides for convictions by Courts of Session and Presidency Magistrate only, and the exception is not only as to the extent, but also as to the locality of the sentence. GURU-KHARRAS & KATI DOZAR [I. L. R., 23 Bom., 769]

SET-OFF—continued.

I. GENERAL CASES—continued.

statement pleading a set-off.—In a suit in which the plaintiff sued, as son of a deceased vaki, to recover the amount of a promissory note and bond executed by the defendant to his deceased father, the defendant alleged in his written statement that the plaintiff's father had collected funds belonging to him, as his vaki, exceeding the amount due on the promissory note and bond and asked for a decree for the difference. *Held* (1) that the written statement must be regarded as a plea in regard to the set-off, and should have been stamped accordingly; (2) that if the plaintiff claimed as the heir and representative of his father, the set-off was rightly pleaded. *CHEN-NAPPA v. RAJAGUNATHA*. I. L. R., 15 Mad., 29.

5. Right of set-off—Cross-

demand arising out of same transaction.—*Semble*—The right of set off will be found to exist not only in cases of mutual debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover, and the defendant be driven to a cross-suit. *CHAKR v. RUTHNAAVALOO CHETTI*. 2 Mad., 296.

6.

Cross-demand arising out of same transaction.—Suit to enforce *contract—Damages.*—The right of set-off exists where there are cross-demands arising out of one and the same transaction, or where these are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. In a suit to recover money due under a contract made between the plaintiff and defendants,—*Held* that the defendants were entitled to set off the amount of damages which the defendants had proved they had sustained by reason of the plaintiff's breach of the contract sued on. *KISTNASAMY PILLAY v. MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS*. 4 Mad., 120.

7. Cross-demand arising out of the same transaction—Civil Procedure Code (Act XIV of 1882), s. 111.—When

the defence raises a cross-demand which is found to arise out of the same transaction as, and is connected in its nature with, the plaintiff's suit, the defendant is entitled to have an adjudication of it, although it may not amount to a set-off under s. 111 of the Civil Procedure Code. *Bhagbat Panda v. Bamdeb Panda*, I. L. R., 11 Cal., 557, relied on. *Clark v. Ruthnavaaloo Chetti*, 2 Mad. H. C., 296, referred to. *CHISHOLM v. GOPAL CHANDER SURMA*. I. L. R., 16 Cal., 711.

8.

Civil Procedure Code, s. 111—Suit for balance of account.—The defendant was lessee from Government of a bridge of boats over the Ganges under a lease for five years, the consideration for which was payable by instalments extending over the term of the lease. The lease contained, amongst other provisions, one to the effect that the Government, if it saw fit at the expiration of the lease to farm the bridge to any other contractor, should be bound to take over the lessee's plant at a fair valuation to be determined by

SET-OFF—continued.

I. GENERAL CASES—continued.

arbitration; and another clause provided that "should the Government, however, see fit to cancel the lease during its currency with a view to substitute a pontoon bridge or for any other cause for which the lessee is not responsible, he will be entitled to compensation from Government for all losses." The lessee died before the expiration of the lease, and the Magistrate of the district, acting on behalf of the Government, proceeded to deprive his representatives of the use of the bridge and to seize the stock and materials. The Magistrate then directed two persons to assess the value of the stock, which was ultimately fixed at Rs. 10,900. The Magistrate added a percentage, bringing the total amount up to Rs. 12,100, and a suit was filed on behalf of Government against the representatives of the deceased lessee giving credit to the defendants for such amount, and claiming the balance due in respect of the last two instalments under the contract. *Held* that the sum of Rs. 12,100 assessed in the manner above described could not strictly be regarded as a set-off. The suit was one for balance of account, and the defendants were entitled to dispute the correctness of the plaintiff's estimate of the item allowed in their favour. *SCORRELL v. STATE FOR INDIA v. MADARI LAL*. I. L. R., 13 All., 266.

9.

Civil Procedure Code, ss. 111, 216—Cross-claims of the nature of set-off.—The plaintiffs agreed to purchase from the defendant certain timber. They paid part of the price in advance and took delivery of some part of the timber, but refused to take delivery of the rest, and subsequently sued the defendant to recover part of the price paid, alleging that the portion of which they had taken delivery was not of the quality contracted for. *Held* that in such a suit, the defendant might claim by way of set-off compensation for the loss which he had incurred in the re-sale of that portion of the timber, the subject of the contract, or which the plaintiffs had failed to take delivery. S. 111 of the Code of Civil Procedure is not exhaustive of the descriptions of cross-claim which may be allowed by way of set-off. *Clark v. Ruthnavaaloo Chetti*, 2 Mad., 296; *Kistnasamy Pillay v. Municipal Commissioners for the Town of Madras*, 4 Mad., 120; *Kishorchand Chhapral v. Madhavji Vistram*, I. L. R., 4 Bom., 407; *Prasanna Lal v. Alaxwell*, I. L. R., 7 All., 284; *Bhagbat Panda v. Bamdeb Panda*, I. L. R., 11 Cal., 557; and *Chisholm v. Gopal Chander Surma*, I. L. R., 16 Cal., 711, referred to. *Niaz Gurr Khan v. Durga Prasad*. I. L. R., 15 All., 8.

10.

Right to set off a claim for unliquidated damages—Civil Procedure Code (Act X of 1877), s. 111—Costs—Act XXVI of 1864, s. 9.—The provisions of the Civil Procedure Code (Act X of 1877) do not give the right to set off claims for unliquidated damages, but that Code does not take away any right of set-off, whether legal or equitable, which parties to a suit would have independently of its provisions. Where, therefore, in a suit for the price of goods sold and delivered, the

SEP-OF—continued.

1. GENERAL CASES—continued.

of this award, and shall also be entitled to recover the amount by suit in Court. Both parties shall act up to this award in its entirety. The sum of Rs 338-0-0, which has been found due and payable by G to A, as per account showing the mutual dealings between the parties, shall be made good as follows, i.e., G shall pay to A the whole amount of Rs 338-0-0 by the middle of the month of Pous 1276 Baisi, either in a lump sum or by instalments, and in case of non-payment within the said period he shall be charged with interest at the rate of one per cent. up to the day of payment. A sued to recover from G the money found to be due and payable to him under the award. G admitted the claim, but desired to set off half the amount of certain debts which were payable under the award by the parties jointly, and which he alone had satisfied. The lower Appellate Court deducted from the claim items of the demand admitted by A, but refused to determine G's right to set off the items which A disputed on the ground that they could be more conveniently inquired into in a separate suit. It was held (per STUART, C.J., SPARKER, J., dissenting) that G was entitled to demand a set-off, and that the lower Appellate Court should have inquired into the disputed items of the demand, and not have referred G to a separate suit in respect of those items. GARI SAHAI v. RAY SAHAI [7 N. W., 167]

14. *Suit for redemption, Decree in—Set-off of costs against mortgage money— Lien of attorney—Civil Procedure Code, 1877, ss. 111, 221.*—The decree in a redemption suit directed the plaintiff (the mortgagee) to pay the mortgage-money and interest to the defendant, and directed the defendant to pay the plaintiff the costs of the suit. Held that the plaintiff was entitled to set off the amount of his taxed costs against the mortgage-money which he was liable to pay under the decree, notwithstanding any claim that the defendant's attorney might have against the defendant in respect of the defendant's costs of suit. BRUJAH DASS v. JUGGERNAH DASS I. T. R., 4 Cal., 742

15. *Civil Procedure Code (Act XIV of 1882), s. 221—Costs due by mortgagee to mortgagee—Set-off against the mortgage-debt—Liability of mortgagee for any balance—Redemption suit.*—The mortgagee is entitled to set off or deduct the amount of costs payable to him under the decree against or from the mortgage-debt payable by him. If the amount of the costs be larger than the mortgage-debt, the mortgagee is entitled to obtain possession at once of the mortgaged property and to recover the balance against the mortgagee. SIVU v. BARI I. T. R., 17 Bom., 32

16. *Insolvent Act, s. 39—Mutual credit—Civil Procedure Code, 1877, s. 111.*—Where there is a debt due from an insolvent prior to his insolvency to another from whom there was a debt which was in dispute due to the insolvent,

SEP-OF—continued.

1. GENERAL CASES—continued.

in a suit brought by the Official Assignee to recover the latter debt, the defendant is entitled, under s. 39 of the Insolvent Act 11 and 12 Vict., c. 21, to set off the debt due from him to the insolvent against sums which may be claimed from him. MILLER v. BELL [6 C. T. R., 294]

17. *Civil Procedure Code, 1882, s. 111—Court-fee on set-off.*—In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. It appeared that the defendant had previously sued the plaintiff to recover the same amount as was now claimed by way of set-off, as being due for the price of cloth sold and delivered by the defendant to him; and the plaintiff (then defendant) pleaded that there had been no sale to him, but the cloth had been delivered to him on commission sale. The suit was dismissed on the ground that there was no proof of a sale of cloth, and the question whether any sum was due for cloth sold on commission sale was not gone into. The cloth now alleged to have been delivered on commission sale was the same as that alleged in the former suit to have been actually sold to the plaintiff. Held that the defendant was entitled, under s. 111 of the Civil Procedure Code, to set off the amount claimed as due for goods sold on commission against the plaintiff's demand. Held also that the court-fee payable on the claim for set-off was the same as for a plain in a suit. AZAM ZAKIA v. NATHU ALI I. T. R., 8 All., 396

18. *Liquidated sum due on bond—Suit for rent.*—A liquidated sum due on a bond is capable according to law, even without an agreement to that effect, of being set off against sums due for rent. WATSON & Co. v. BORO-SOONDHARE DEBIA I. T. R., 16 W. R., 225

19. *Debt due from deceased husband—Debt due to widow.*—A widow is liable for a debt contracted by her husband. Such debt may be set off against a debt due to her. GRISH CHUNDER LAHOORY v. KOOMAR DARRA [1 W. R., Mis., 23]

20. *Lambardar—Co-sharer—Revenue, Payment of—Profits, Suit for share of.*—Held (SPARKER, J., dissenting) that a lambardar, who had paid an arrear of Government revenue out of the collections of subsequent years without reference to the co-sharers, was entitled, in a suit against him by a co-sharer for his share of the profits for such subsequent years, to claim in the suit a deduction on account of such payment. UDAI SINGH v. JAGAN NATH I. T. R., 1 All., 135

21. *Partidar of shares in zamindari—Set-off on payment of rent.*—The four defendants obtained jointly a 5 annas share in the zamindari. Defendants 1 and 2 separated from 3 and 4, each taking 8 annas

SET-OFF—continued.

1. GENERAL CASES—continued.

decree will lie to the High Court, and not to the District Court. *RAMAIVAN MAI v. CHAND MAI*
[I. L. R., 10 ALL, 587]

30. Claim of different nature.—It is not equitable to allow a set-off against a claim relating to a particular account, stated, of a matter of another nature altogether. *KARIE KOOBAN CHOCKERAVUTTY v. HANO CHUNDIE CHOCKERAVUTTY*
17 W. R., 177

31. Amount in excess of jurisdiction of Court.—A Court cannot entertain the question of set-off if the amount claimed by the defendant exceeds the amount cognizable by it. When a defendant pleads a set-off and claims a decree, the subject-matter of the suit is no longer the mere claim of the plaintiff, but the cross-claim of both parties. *RAM LAT v. LAKASAPPE*
3 N. W., 114

32. Unascertained sums.—Setting off an unascertained sum against another is a mode of settlement which, if suggested to the parties as a compromise, may, with their assent, be a fit end of a litigation, but cannot properly be made the basis of a decree between hostile litigants. *BAOHUN v. HAYID HOSSAIN, ABDOL AZEER v. HAYID HOSSAIN*
17 W. R., 113; 10 B. L. R., 45

33. Civil Procedure Code, 1859, ss. 121, 195.—Claim for unliquidated damages.—Suit on bill of exchange.—Cross-demands.—Ss. 121 and 195 of the Code of Civil Procedure (Act VIII of 1959) had not the effect of enlarging the right of set-off. In a suit against the acceptor to recover the amount due upon several bills of exchange, the defendant sought to set off a claim for unliquidated damages unconnected with the bills of exchange. *Held* that defendant had no right to set off his claim against the debt due to the plaintiffs. *CLARK v. RUTNAMVALOO CHEETTY*
2 Mad., 296

34. Unascertained damages.—Civil Procedure Code, 1859, s. 121.—Under s. 121, Act VIII of 1859, a defendant could not claim a set-off for damages in respect of an alleged breach of contract which had not been ascertained in a suit brought against him to recover the amount due on certain dishonoured hundis. *RAM DIAL v. RAMDHUN DASS*
3 Agria, 43

35. Separate debt.—Directors.—A separate debt cannot be set off against a joint and several debt of directors cannot set off money due from the company to them against sums which they may be ordered to refund to the liquidators. *New Fleming Spinning and Weaving Company v. KASSOWJI NAIR*
[I. L. R., 8 Bom., 373]

36. Joint and separate debts.—Mutual dealings.—A had dealings with a firm consisting of a father and two sons, who carried on business jointly. Shortly after the father's death, account of a claim against his father,—*Held* that

SET-OFF—continued.

the two brothers separated, and a debt with each separately, having notice of the separation. A could not set off, against a claim made by one of the brothers, in respect of the separate dealings between himself and A, a debt due to himself from the former joint concern. *DHURVUT SINGH v. KORBES*
[1 Ind. Jur., N. S., 354]

37. Costs.—Omission to award costs.—A set-off cannot be allowed for costs not actually awarded, as where a decree of the High Court gave the successful appellant costs of that Court and of the lower Appellate Court, but omitted to award the costs of the first Court. *HANO PRASHAD ROY CHOWDHARY v. POOL KISHOREN DASSER*
16 W. R., 308

38. Suit for carriage of goods.—Set-off for damages.—In a suit for money claimed on account of the carriage of goods in which defendant pleaded non-indebtedness and a set-off on account of damage caused to the goods,—*Held* that defendant could not answer the claim with the set-off on account of damages, though the extent, if any, to which defendant was entitled to draw back might be put in issue, after which it would still be open to defendant to bring an action against plaintiff for special damages. *SOANTAN v. HERROLD*
10 W. R., 295

39. Suit for mesne profits.—Civil Procedure Code, 1859, s. 121.—A set-off is not admissible in a suit for mesne profits, which is not a debt within the meaning of s. 121, Act VIII of 1859. *ROYES ROJON OOPADHYA v. GREETA NAND OOPADHYA*
5 W. R., 160

40. Unascertained mesne profits.—Debt not due at time of suit.—An indubitable claim for damages in the nature of unascertained mesne profits cannot be pleaded as a set-off against specific claim for rent of later years. Such damages must be sued for separately. In a suit for plaintiff's claim money in deposit with the plaintiff, unless such money was due and payable to the defendant at the time the suit was brought. *GOCODU COOMAR v. BHICHOOK SINGH*
22 W. R., 1

41. Civil Procedure Code, 1877, s. 111.—Mortgage.—Compensation for waste.—The usufructuary mortgagee of certain land sued the mortgagor for the money due under the mortgage. The mortgagee alleged that the mortgagor had committed waste and was liable to him for compensation which he claimed to set off. *Held* that under s. 111 of Act X of 1877 the amount of such compensation could not be set off. *RAHNU NATH DASS v. ASHRAFF HUSSAIN KHAN*
[I. L. R., 2 ALL, 252]

42. Claim against deceased father.—Right to appropriate property.—Where a widow administering her husband's estate sued to recover certain movable property wrongfully appropriated by her son, who pleaded a set-off on account of a claim against his father,—*Held* that

SET-OFF—continued.

1. GENERAL CASES—concluded.

supplementary agreement with the plaintiffs on the 10th August 1894, whereby it was arranged that the plaintiffs should accept shares in the defendants' company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust in favour of trustees to be named by the plaintiffs for the purpose of securing the said debentures, such indenture to be prepared by the plaintiffs' solicitors together with the debentures, at the expense of the company, and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of and supplemental to the agreement of December 1892. This agreement was signed by J. Marshall on behalf of the plaintiffs. The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors. The plaintiffs, having paid the solicitors' bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894. The defendants alleged that the plaintiffs had failed to carry out their part of the agreement of 1882, and contended that they were entitled in this suit to claim damages against the plaintiffs and to set them off against the plaintiffs' claim. Held that the defendant should not be permitted in this suit to claim damages against the plaintiffs for their alleged failure to carry out their part of the contract of 1892. Their counter-claim or set-off did not fall under s. 111 of the Civil Procedure Code (Act XIV of 1882), as it was not a claim for an ascertained sum of money, and, that being so, they could not claim as of right to have it investigated in this suit. Nor was there any equitable ground for admitting the counter-claim, as it could not be doubted that there would be considerable delay in investigating it, and there was no reason why the plaintiffs should have to wait so long for the money to which they were now legally entitled. Held also that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust-deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. DORSON AND BARTON v. BENGAL SPINNING AND WEAVING CO. [T. L. R., 21 Bom., 128]

2. CROSS-DECREES.

51. *Decrees under Act X of 1859.—Quare*—Where the provisions of s. 209 of the Civil Procedure Code, 1859, were applicable to decrees passed under Act X of 1859. DR SILVA v. AMBER SHAWA. 16 W. R., 303. There is now no distinction in this respect between rent decrees and other decrees. *Decreed on private arbitration.*—An award of private arbitration *per se* did not come under the provisions of s. 209 of Act VIII of 1859, so as to be set off against a decree of Court. DHEENNA SINGH v. DEEN DYAL SINGH. [11 W. R., 144]

SET-OFF—continued.

2. CROSS-DECREES—continued.

53. *right—Decrees in same Court for execution.*—Before cross-decrees can be set off the one against the other, it is necessary that they should be in the same Court for execution. EAST INDIA RAILWAY COMPANY v. HALL. 3 N. W., 104. DE SILVA v. AMBER SHAWA. 16 W. R., 303. *Requisites for right—Decrees in same Court for execution—Civil Procedure Code, 1859, s. 209.*—The provisions of s. 209, Act VIII of 1859, applied only to cross-decrees of the same Court between the same parties, or to cross-decrees between the same parties, though of different Courts, which had found their way for execution to the same Court. RAJ COOMAR GHOSE v. GOBIND NATH SANDAYAL. 7 W. R., 480. Reversing on review, S. C. GOBINDNATH SANDAYAL v. RAJCOOMAR GHOSE. 6 W. R., 21. HADOD SIRDAR v. JADOO MOHAR DOSSAN. [17 W. R., 48] *Requisites for right—Decrees in same Court for execution.*—The decrees must be under execution at the same time. JUDOO NATH ROY v. RAJ BURSAT CHUTTAGAR. [7 W. R., 636] 56. *right—Decrees not in same Court—Act VIII of 1859, s. 209.*—Act VIII of 1859, which provided for the set-off of cross-decrees, applied only to decrees of the same Court or decrees sent to a Court for execution. Therefore where, on application for execution of a decree in the Court of a Principal Sudder Ameen, it was sought to set off a decree obtained in the Judge's Court, which had not been sent to the Principal Sudder Ameen for execution, Held that s. 209, Act VIII of 1859, did not apply. GIRISHCHANDRA LATHAR v. BAKIN CHAND. [B. L. R., Sup. Vol., 503: 6 W. R., 73] 57. *Requisites for right—Decrees for definite sums—Civil Procedure Code, 1859, s. 209.*—In order to admit of a set-off being made when there are cross-decrees, the parties must be the same, and the sum due under each decree or decrees must be definite. KAZAOD-DEEN HOSSAIN v. RUTLOONISSA. [5 W. R., 12] 58. *Appeal from decree.*—A judgment-debtor is entitled to set off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree. HIRAO PARSANAD ROY CHOWDHURY v. SHAMA PARSANAD ROY CHOWDHURY. [5 W. R., 215, 52] 59. *Set-off of joint decree—Civil Procedure Code (Act X of 1857), s. 216.*—A judgment-debtor may set off, against the amount of the decree against him, the amount of a decree which he has obtained against the decree holder and other persons. HIRAO PARSANAD ROY CHOWDHURY v. SHAMA PARSANAD ROY CHOWDHURY. [T. L. R., 9 Cal., 470: 13 C. L. R., 83]

SETT-OFF—continued.

2. CROSS-DECREES—continued.

the 24-Pergunnahs. B, who got a decree against A in the 24-Pergunnahs, applied to have the decree set off against the other decree in the hands of C. *Held* that, in such circumstances, s. 209, Act VIII of 1859, did not apply. ROZKHOODDEEN v. JHANGAER [5 W. R., 22

73. *Purchaser of decree—Act VIII of 1859, s. 209.*—The purchaser of a decree sought to execute the decree, but was opposed by the judgment-debtor, who sought to set off two other decrees obtained by herself and her two sisters against the judgment-creditor. These decrees were obtained about the date of the purchase, but it did not appear whether previously or subsequently. *Held* in neither case could they be the subject of a set-off. KASIRAMISSA BIRI v. HILLS [6 B. L. R., 127

74. *Purchaser of decree—Act VIII of 1859, s. 209.*—A and B, having obtained a decree for a sum of money against C and D, sold part of their interest therein to B, who afterwards sold the same to F. G obtained a decree against F, and in execution attached and sold F's interest in the decree obtained by A and B, and H became the purchaser of the same. He applied for execution against C and D. C claimed to have set off the amount of a decree obtained by his son I against G, and which C alleged was held by I in benami for him as a cross-decree within the meaning of s. 209 of Act VIII of 1859. *Held* that the decree could not be set off. ANANDA CHANDRA CHOWDEY [3 B. L. R., 450

75. *Purchaser of decree—Act VIII of 1859, s. 209.*—The purchaser of a decree held by A, against whom B holds a cross-decree, takes it subject to a set-off on account of B's decree. KAIM ALI JAWABDAR v. LAKHIKANT [1 B. L. R., 32

NUNDO COOMAR BUESHEE v. KOONJO KISHORE ROY [6 W. R., 73

DOORGA CHURN NUNDEE v. DEBNATH ROY CHOWDHURY [18 W. R., 442

OORENDRIO MOHUN MOOSTAFEE v. POORNA CHURN DEB BHUTTAACHARY [19 W. R., 85

KAM CHUNDRE v. MOHENDRO NATH BOSE [21 W. R., 141

76. *Civil Procedure Code, 1859, s. 209.*—A got a decree against B, who subsequently got a larger decree against A, which he sold to C. After that A executed it himself. C then took out execution against A, who, having unsuccessfully put in a claim under Act VIII of 1859, s. 246, brought a suit to have his claim established, and the sale of B's decree to C declared collusive. Both the lower Courts found that the sale was *bona fide*. *Held* that this finding could not be set aside on special appeal, but that, when C took out

SETT-OFF—continued.

2. CROSS-DECREES—continued.

in proportion. Plaintiff allowed more than three years to elapse from the date of the former decree without applying for execution; but when defendant applied to execute his decree for costs, she petitioned for a set off so much of the costs as had been decreed to her. *Held* that these two judgments and decrees must be treated as reduced to one, wherein judgment was given in part for the plaintiff and in part for the defendant; and before issuing a warrant of execution, the Court was bound to ascertain how much, on the whole case, was due to the party executing, and to issue a warrant for that sum and no more. *Held* further that no question of limitation could arise in respect to the execution of the first decree, which became incapable of execution as soon as the High Court's decree in appeal (which was for a larger sum) was passed; but that the latter, under s. 209, Code of Civil Procedure, could only be executed to the extent of the difference between the two decrees. NUBO LATI KHAN v. MAHABANKE OR BURDWAN [9 W. R., 590

99. *Act VIII of 1859, s. 121.*—A, by deed of zur-i-peeshgi, let certain lands to B, to secure a sum advanced by him to her and interest thereon. B covenanted to pay certain dues annually to A. On failure by B, A obtained a decree against him for the amount. In execution of a decree against B, C purchased his interest in the sum secured by the deed of zur-i-peeshgi, and sued A to recover the same. *Held* that A was entitled in such suit to set off the amount of the decree obtained by her against B. BHAGWANT KUNWAR v. LATA BAHADUR PRASAD [2 B. L. R., 380

70. *Assignment of decree—Act VIII of 1859, s. 209—Act XXIII of 1881, s. 11.*—The plaintiffs obtained a decree against B in the Subordinate Judge's Court. Some time afterwards B recovered a decree in the Munsifs Court against the plaintiffs. The plaintiffs thereupon applied for the attachment of this decree in satisfaction of their own against B. Before attachment, however, B assigned her decree to C. On C trying to execute B's decree against the plaintiffs, they brought the present suit for a declaration of their right to have a set-off made of the two decrees. *Held* that such a suit would not lie. RUGHAY NUN- DUN KAIN v. SUMNASSAR PANDAY [13 B. L. R., 489; 22 W. R., 235

71. *Assignment of decree—Act VIII of 1859, s. 209—Act XXIII of 1881, s. 11.*—The plaintiffs obtained a decree against B in the Subordinate Judge's Court. Some time afterwards B recovered a decree in the Munsifs Court against the plaintiffs. The plaintiffs thereupon applied for the attachment of this decree in satisfaction of their own against B. Before attachment, however, B assigned her decree to C. On C trying to execute B's decree against the plaintiffs, they brought the present suit for a declaration of their right to have a set-off made of the two decrees. *Held* that such a suit would not lie. RUGHAY NUN- DUN KAIN v. SUMNASSAR PANDAY [13 B. L. R., 489; 22 W. R., 235

72. *Civil Procedure Code, 1859, s. 209.*—A obtained a decree in a Court of the N.-W. Provinces against B. C, taking in a Court of *bond fide* by assignment, applied to execute it in

SET-OFF—continued.

2. CROSS DECREES—continued.

complaints alleged in it, without the Court calling for such proof. *Mittra Sivan v Choober Durgott* [18 W. R., 332]

81. Civil Procedure

77. Fraudulent as—

execution, & might apply for a set-off under s. 203. *Duro Narayan Sivan v Choober Durgott* [24 W. R., 298]

2. CROSS-DECREES—continued.

79. Transferred as—

debt, amount as fraudulent.—*Held* that it was fraudulent, and the right of set-off was unaffected.

73 W. R., 470

78. Code, 1877, s. 216—Execution of cross decrees—

Notwithstanding anything in s. 240 of the Code of Civil Procedure, he is not bound to inquire whether the judgment debtor holds a cross decree of higher amount against the decree holder any more than he is to inquire, in a ordinary case, whether the decree under which execution has issued, has been satisfied or not. There are questions to be determined by the Court having execution. Where property sold in execution of a valid decree, under the order of a competent Court, was purchased bona fide and for fair value.—*Held* that the mere existence of a cross decree for a higher amount in favour of the judgment debtor, without any question of fraud, would not support a sale by the latter against the purchaser to set aside the sale. *Hewa Manoy v Chaitan* [1 I. R., 14 Cal., 18]

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

1. I. R., 13 A., 108

13 W. R., 212

82. Pending suit by defendant in which he has credited sum and for

83. Obligation to set off—Where there is a cross decree (not cross decrees), the party entitled to the lesser sum cannot be allowed to take out execution against the party entitled to the larger sum, and the Court is bound to direct a set-off or to enter satisfaction of the smaller sum upon the decree.

13 W. R., 106

13 W. R., 106

13 W. R., 106

13 W. R., 106

13 W. R., 106

13 W. R., 106

13 W. R., 106

13 W. R., 106

13 W. R., 106

SET-OFF—continued.

2. CROSS-DECREES—continued.

Bukshie v. Soorendro Nath Roy Chowdhury, 13 W. R., 106; and *Brinjath Dass v. Juggermath Dass*, I. T. R., 7 Cal., 742, referred to. *Isari v. Gopal Saran*. I. T. R., 6 All., 351.

88. *Code (1882), s. 217—Cross-claims under the same decree—Costs under the same decree recoverable in different ways.*—S. 217 of the Code of Civil Procedure is not limited in its application to cases in which the remedy of each party against the other is of precisely the same nature. Thus, where one party to a suit was entitled to recover certain costs by means of the sale of hypothecated property, and the other party under the same decree was entitled to recover a smaller sum as costs from his opponent personally, it was held that s. 217 of the Code applied, and that the costs recoverable personally could be set off against the costs recoverable by sale of the hypothecated property. *Kalkin Prasad v. Ram Din*, I. T. R., 5 All., 272, dissented from. *Bhagwan Singh v. Katan*. I. T. R., 16 All., 395.

89. *Civil Procedure Code (1882), ss. 246, 247—Execution of decree—Parties entitled under same decree to recover from each other.*—A plaintiff obtained a decree for the surrender to him of certain mortgaged property on his saying the defendants the mortgage amount within three months together with the value of improvements, and for the payment by defendants to him of the costs of suit. He applied to recover the said costs by the arrest of the defendants. *Held* that the defendants were entitled under s. 247 of the Code of Civil Procedure to set off the amount payable by them to plaintiff by way of costs against the mortgage amount and value of improvements payable by plaintiff to them. *Bhagwan Singh v. Katan*, I. T. R., 16 All., 395, approved. *SANKAR MAHON V. GOPAL PATAN*. I. T. R., 23 Mad., 121.

90. *Civil Procedure Code, ss. 246, 247, 411—Cross-decrees in same decree—Recovery by Government of Court-fees in paper suit.*—A plaintiff suing in form *papers* to recover property valued at Rs. 60,000 obtained a decree for Rs. 1,439. The Court, with reference to the provisions of s. 411 of the Civil Procedure Code, directed that the plaintiff should pay Rs. 1,196 as the amount of Court-fees which would have been paid by him if he had not been permitted to sue as a pauper. The Collector having applied under s. 411 to recover this amount by attachment of the Rs. 1,439 payable to her by the plaintiff under a decree which she had obtained in a cross-suit in the same Court, should be set off against the Rs. 1,439 payable by her to him, with reference to ss. 246 and 247 of the Code, and that thus nothing would remain due to her which the Government could recover. No application for execution was made by the plaintiff for his Rs. 1,439, or by the defendant for her costs. In appeal from an order allowing the Collector's

SET-OFF—continued.

2. CROSS-DECREES—continued.

Code is applicable to cross-decrees and not to cross-claims under one decree. To make s. 217 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case. *Held* therefore, where a decree for money of a Court of first instance directed that the money should be realizable from certain specific property of the defendant, and executed his person and other property, and the lower Appellate Court modified this decree by extending it to the person of the defendant, and in second appeal the High Court set aside the lower Appellate Court's decree and restored that of the first Court, directing that the costs of the defendant in the lower Appellate Court and in the High Court should be paid by the plaintiff, that, inasmuch as the plaintiff was only entitled to recover the judgment-debt due to him from the defendant from such specific property, whereas the defendant was entitled to recover the judgment-debt due to him from the plaintiff from his person and property, the provisions of s. 217 were not applicable. *KATKA PRISAD v. RAJ DIX*. I. T. R., 5 All., 272.

88. *Costs—Execution of same decree—Where a Court makes two different awards of costs in one and the same decree, when it ought to have made a decree only for the difference between them.*—*Held* that execution could only be taken out for the difference between the two amounts awarded. *AMJOD ALI KHAN v. RAJUL HOSAIN*.

87. *Conditional decree—Purchase-money—Costs—Civil Procedure Code, 1882, ss. 214, 221, 247—Decree in suit for redemption.*—The decree in a suit to enforce a right of pre-emption directed, in accordance with the provisions of s. 214 of the Civil Procedure Code, that the plaintiff should obtain possession of the property in execution of the decree and for the recovery of the costs awarded to him, deducting from such costs the unpaid portion of the purchase-money. *Held*, applying, by analogy of ss. 221 and 247 of the Civil Procedure Code, the equitable doctrine of set-off, that the plaintiff was entitled, when depositing the purchase-money under the decree, to deduct therefrom the sum the decree awarded to him as costs, and that therefore the decree did not become null and void by reason that he had not deposited the full amount of the purchase-money within time. *Legumwree Dabee v. Eshan Chunder Sein*, B. T. R., Sup. Vol., 938; 9 W. R., 230; *Jugo Mohan*

SETTLEMENT—continued.

1. CONSTRUCTION—continued.

engagements made at the time of settlement ought to be considered *prima facie* as intended to subsist only for the time of settlement. *DIAL SINGH v. JAWAHIR SINGH* 2 Agrs, 108
IKHAI ALI KHAN v. LUDWA 2 Agrs, 113

2. Effect of settlement—Duration of, and right created by, settlement—Transfer of proprietary right—Where a settlement of a person professing to be a proprietor—Held that the settlement conferred a proprietary right, and not a limited interest; and that the plaintiff's vendor, having been admitted to a share in the settlement with a maliki allowance, became a co-sharer in the proprietary interest, which proprietary right had been transferred to the plaintiffs by their purchase. *POGOS v. AOZAR BIBER*
 18 W. R., 274

3. Settlement by Government of land on which stood a hat—Calcutta for purpose of settlement—Tools—Halt—Reg. XXVII of 1793—A settlement of land (on which stood a hat) by the Government to a private person, such settlement being arrived at by taking into calculation the profits of the hat, does not amount to a grant of the tolls, but of the land only; the reason for looking at the tolls being to ascertain the value of the land. Such a settlement therefore does not imply a monopoly which will enable the holder to restrain other persons from setting up another hat close by. *RAKHAI DAS ADY v. DURGA SUNDARI DAS*, *DURGA SUNDARI ADY v. RAKHAI DAS ADY*
 17 Calc., 458

4. Summary Settlement Act VII of 1863—Nature of settlement made and sanad issued under a mistake—Quit-rent paid by landholders to Government under such settlement—Refund—Void agreement—Contract Act (IX of 1872), ss. 20, 65—Sanad, *Alaung and effect of—* Under the Bombay Summary Settlement Act (Bombay Act VII of 1863), a settlement in respect of the village of Mankol was effected in 1864 between the Government and the plaintiffs, who were the landholders, and a sanad was granted to the plaintiffs, under the terms of which a certain yearly quit-rent was payable by them to Government in respect of the said village. At the time of the settlement the plaintiffs believed that they were the superior holders of all the lands in the village, including certain wanda lands. It appeared, however, that the wanda lands were the property of certain ghatias, who were in possession as owners, and that the plaintiffs were not the holders of these lands within the meaning of s. 32 of Bombay Act VII of 1863. The Government, however, required the plaintiffs to pay the entire quit-rent of the village for the Sanwad year 1939 1940, as fixed by the sanad. The plaintiffs paid under protest and brought this suit to recover the amount (£400-12-6) paid in respect of the wanda lands. *Held* that the plaintiffs were entitled to a refund of the quit-rent

SETTLEMENT—continued.

See SALE FOR ARIKANS OF REVENUE—IX-COMMISSIONERS—ACT XI OF 1869.

14 W. R., 1
 15 W. R., 141
 16 W. R., 141
 17 Calc., 867

See CASES UNDER SALE FOR ARIKANS OF REVENUE—INCUMBRANCES—B E N G A T REGULATION XI OF 1822.

See STAMP ACT, 1879, s. 3, cl. 19.

17 Calc., 340
 18 Calc., 422

See STAMP ACT, 1879, s. 1, art. 57.

17 Calc., 453
 18 Calc., 210

See VILLAGE CHOWDHARS ACT, ss. 48, 61.

17 Calc., 626
 18 Calc., 814

Construction of—

See HINDU LAW—GIFT—CONSTRUCTION OF GIFTS.

17 Calc., 863
 18 Calc., 303

Gordon Settlement.

See HEREDITARY OFFICES ACT.

14 C. W. N., 517
 15 Calc., 423

See SERVICE TENDERS.

17 Calc., 13
 18 Calc., 22

Made by guardian.

See HUSBAND AND WIFE.

17 Calc., 951

on marriage.

See MARRIAGE SETTLEMENT.

1 Ind. Jur., N. S., 290

See WILL—CONSTRUCTION.

17 Calc., 514

Post-nuptial.

See TRUSTS OF PROPERTY ACT, s. 53.

17 Calc., 185

Suit to set aside—

See PARTIES—PARTIES TO SUITS—GOVERNMENT.

17 Calc., 327
 18 Calc., 118; 21 W. R., 327

22 W. R., 52

See SOUTHERN PRINCIPALS SETTLEMENT REGULATION I. L. R., 18 Calc., 146

Wife's equity to—

See HUSBAND AND WIFE.

17 Calc., 144

1 CONSTRUCTION.

Agreements made at time of settlement, Duration of—Held on the construction of an "ikramnah" and settlement "roobkari" that it was binding on the plaintiffs only for the currency of settlement. In general

SETTLEMENT—continued.
2. RIGHT TO SETTLEMENT—continued.

time of the purchase held only certain market land
many of the market grant by Government to another
party stands in the place of the zamindar, not in
respect of the market land only, but in respect of all
the right to settlement as zamindar after the market
grant comes to an end. *GOKUL PRASAD v. DU-*
GHAKHAT 11 Agre, 245

8. Right among co-sharers—
Arrangement for collection and receipt by one co-
sharer—Effect on rights of others on expiration of
term of settlement only—Held that after the expiry
of the settlement such co-sharers were, in the re-
venue authorities thought fit, entitled to be allowed
to engage for their shares. KOOWARS SINGH v.
SHAR DIAL 3 Agre, 287

9. Right on resumption—Suit to
set aside settlement—In a suit by a person claiming
certain lands which have been resumed by the Gov-
ernment, the plaintiff is entitled, on the allegation
that he is the rightful owner of the lands and that
the defendant obtained a settlement by false allega-
tions of ownership and of possession, to an adjudica-
tion of his right to a settlement. It is not discre-
tionary with the Collector under such circumstances
to refuse with any person the places for the land, nor
is such settlement, if made, final as regards all claims.
MANOHAR DESAI v. WILK
13 B. L. R., 118. 21 W. R., 327

11. In 1863 the Government killed the land
ment with J. S. who entered into possession of the
the Government in 1851 made a temporary settle-
his giving security. On his failure to find security,
Government denied his title, but offered him a loan of
tenure, claimed settlement as proprietor. The Gov-
the resumption, H. N., the former holder of the
Government denied his title, but offered him a loan of
his giving security. On his failure to find security,
the Government in 1851 made a temporary settle-
ment with J. S. who entered into possession of the
land. No malikana was received to or over paid to

right to a settlement as proprietor, the suit be enforce
such right be barred by limitation, the having been
effectually disposed, and the cause of action, if
any, having accrued in 1841. Held—The Court
appeared to consider that in fact H. N. never had any
right to maintain an action in the Civil Court to
compel the Government to make a settlement with
him. *JOR MANGRA SINGH v. JOHANN SINGH*
GOTTAKHAT v. JOHANN SINGH 7 W. R., 465
12. Right to settlement of per-
son whose tenure is not cancelled.—*Lease by*
Government after purchase at sale for arrears.—A

SETTLEMENT—continued.
1. CONSTRUCTION—continued.

all the lands in the village. There was therefore a
common mistake as to a matter of fact which both
parties must have regarded at the time as essential to

would lands might be treated as distinct from that
which applied to the remaining lands of the village,
the former being sold, and the plaintiff being there-
fore entitled to a refund of the quit rent paid in
respect of such lands under s. 65 of the Contract Act.
A grant issued under Bombay Act VII of 1863
merely declares what by s. 6 of the Act is stated to be
the effect of the settlement to which both the
Government and the holders of the land have con-
sented but it is by virtue of the settlement itself as
provided by the Act that Government are entitled to
demand payment of such rent. SECRETARY OF STATE
ROY LALIA v. SHREE KRISHNAJI NATHIAWAD
11 B. L. R., 17 Bom., 407

5. Claim to settlement prior
resumption—*Hing Neg. II of 1919—F. Labak-*
rydars—Limitation—Long possession gives rise to a
settlement, unless the party claiming a settlement
has put forward his claim when the lands were re-
sumed, and the notice has issued to parties to assert
their claims to such settlements, and has thus com-
menced with the resumption of the land. GOLAOK
CHANDRA CHOWDHURY v. AIR MORTAL
18 B. L. R., 528 note

6. — — — Claim to permanent settle-
ment after expiration of temporary one—
Resumption of right by contract—When a temporary
settlement expires, whether the holder thereof had
been the proprietor of the land within the meaning
of the regulations or a stranger, the proprietor
is entitled to come forward and to claim as of right
from the Government a permanent settlement of the
land, unless he has by his own conduct forfeited that
right. WATSON & CO. v. BHOJO SOODHAKAR
10 W. R., 385

On record an order was made declaring the plain-
tiff entitled to the permanent settlement instead of
the defendant, and recording an appeal.
subject to the proviso that such declaration would
not entitle him to dispossess them if they were in
possession as proprietors. *WATSON & CO. v. BHOJO*
SOODHAKAR DEVA
11 W. R., 376
7. Purchase of zamindari rights
during small Grants—*Right to an extent of*
and interest of one of several zamindars who at the
time of grant—Auction purchase of the rights

SETTLEMENT—continued.

1. CONSTRUCTION—continued.

engagements made at the time of settlement ought to be considered *prima facie* as intended to subsist only for the time of settlement. *Dutt Singh v. JAWAHIR SINGH*. 2 Agrs, 108

IKRAM ALI KHAN v. LUDWA. 2 Agrs, 113

2. Effect of settlement—Duration of, and right created by, settlement—Trans-

fer of proprietary right.—Where a settlement of a taluk, although it ran for twenty years only, was with a person professing to be a proprietor, *Held* that the settlement conferred a proprietary right, and not a limited interest; and that the plaintiff vendor, having been admitted to a share in the settlement with a maliki allowance, became a co-sharer in the proprietary interest, which proprietary right had been transferred to the plaintiffs by their purchase. *Pogose v. AOZAN BIKER*. 18 W. R., 274

3. Settlement by Government of land on which stood a hut—Cul-

lation for purpose of settlement—Tools—*Hd—Reg. XXVII of 1793*.—A settlement of land (on which stood a hut) by the Government to a private person, such settlement being arrived at by taking into calculation the profits of the hut, does not amount to a grant of the tolls, but of the land only; the reason for looking at the tolls being to ascertain the value of the land. Such a settlement therefore does not imply a monopoly which will enable the holder to restrain other persons from setting up another hat close by. *Rakhar Das ADDY v. Durga Sundari Das*. Durga Sundari Dabi v. Rakhar Das ADDY. 17 Cal., 458

4. Summary Settlement—Nature of

Act VII of 1863.—*Nature of Summary Settlement issued under a mistake—Quit-rent paid by sanad to Government under such settlement—Refund—Void agreement—Contract Act (IX of 1872), ss. 20, 65—Sanad, Alleviating and effect of—Under the Bombay Summary Settlement Act (Bombay Act VII of 1863), a settlement in respect of the village of Manakol was effected in 1864 between the Government and the plaintiffs, who were the innamdar, and a sanad was granted to the plaintiffs, under the terms of which a certain yearly quit-rent was payable by them to Government in respect of the said village. At the time of the settlement the plaintiffs believed that they were the superior holders of all the lands in the village, including certain watta lands. It subsequently appeared, however, that the watta lands were the property of certain gharasias, who were in possession as owners, and that the plaintiffs were not the holders of these lands within the meaning of s. 32 of Bombay Act VII of 1863. The Government, however, required the plaintiffs to pay the entire quit-rent of the village for the Samvat years 1939-1940, as fixed by the sanad. The plaintiffs paid under protest and brought this suit to recover the amount. *Held* that the plaintiffs were entitled to a refund of the quit-rent only for the currency of settlement. In general*

SETTLEMENT—continued.

See SALE FOR ARHARS OR REVENUE—IN-CUMBRANCES—Act XI of 1859.

14 W. R., 1
15 W. R., 141
I. L. R., 24 Cal., 887

See CASES UNDER SALE FOR ARHARS OR REVENUE—INCUMBRANCES—B E N G A I

See STAMP ACT, 1879, s. 3, cl. 19.

I. L. R., 7 Mad., 349
I. L. R., 21 Mad., 422

See STAMP ACT, 1879, s. 1, art. 57.

I. L. R., 8 Mad., 453
I. L. R., 20 Bom., 210

See VILLAGE CHOWDARS ACT, ss. 48, 51.

I. L. R., 21 Cal., 626
4 C. W. N., 814

Construction of—

See HINDU LAW—GIFT—CONSTRUCTION OF GIFTS.

I. L. R., 12 Cal., 663
I. L. R., 12 Mad., 393

Gordon Settlement.

See HEREDITARY OFFICES ACT.

4 C. W. N., 517
I. L. R., 20 Bom., 423

See SERVICE TENURE.

I. L. R., 15 Bom., 13
I. L. R., 18 Bom., 22

made by guardian.

See HUSBAND AND WIFE.

I. L. R., 10 Cal., 951

on marriage.

See MARRIAGE SETTLEMENT.

I Ind. Jur., N. S., 290

See WILL—CONSTRUCTION.

I. L. R., 4 Cal., 514

Post-nuptial.

See TRANSFER OF PROPERTY ACT, s. 53.

I. L. R., 22 Cal., 185

Suit to set aside—

See PARTIES—PARTIES TO SUITS—GOVERNMENT.

18 B. L. R., 118 : 21 W. R., 327
22 W. R., 52

See SOUTHERN PRAGUNAH SETTLEMENT REGULATION

I. L. R., 18 Cal., 146

Wife's equity to—

See HUSBAND AND WIFE.

1 CONSTRUCTION.

1. Agreements made at time of settlement, Duration of.—*Held* on the construction of an "ikramnah" and settlement only for the currency of settlement. In general

1. CONSTRUCTION—continued.

direct that the plaintiffs were the superior holders of all the lands in the village. There was therefore a common mistake as to a matter of fact which both parties must have regarded at the time as essential to the agreement, it being made so by the Act itself under which they assumed to contract. Such a mistake under a 20 of the Contract Act (IX of 1872) renders the agreement void. The plaintiff as to the waste lands might be treated as distinct from that which applied to the remaining lands of the village, the former being void, and the plaintiff being there-fore entitled to a refund of the quit rent paid in respect of such lands under a 56 of the Contract Act. A grant issued under Bombay Act VII of 1863 merely declares what by a II of the Act is stated to be the effect of the settlement to which both the Government and the holders of the land have con-sented, but it is by virtue of the settlement itself as provided by the Act that Government are entitled to demand payment of such quit rent. SECRETARY OF STATE FOR INDIA & BURKHESHAH NATHRAO

[I. I. H., 17 Bom., 407]

2. RIGHT TO SETTLEMENT.

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2. RIGHT TO SETTLEMENT—continued.

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3. RIGHT TO SETTLEMENT—continued.

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SETTLEMENT—continued.

6. EFFECT OF SETTLEMENT—continued.

33. **Settlement with several persons—Presumption as to equality of rights.**—In the settlement of a taluk, after resumption by Government with thirteen persons, it is not to be simply because the settlement was made with all of them jointly, particularly where the settlement proceedings show that the question of the extent of the shares was in dispute, and that the settlement was made jointly with the whole without prejudice to title. *GOOROO CHURN PODDAR v. HAREZZA BIRRA*. [17 W. R., 386]

34. **Omission to settle boundaries and proportion of assessment which each cultivator ought to pay—Liability to pay revenue individually.**—In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an Agraharam village for non-payment of triari due from other tenants of the village and to recover the increased triari imposed by the Collector. *Held* that the fact of pots having been issued separately to each tenant, stating the share of land occupied, without defining the holding by boundaries and the proportionate amount of assessment which the cultivator is to pay for it, though affording cogent evidence of the distinct liability of each for the amount of triari stated in his potah and no more, is not conclusive evidence of such individual liability. *ELIATTA v. COLLECTOR OF SATEM*. 3 Mad., 59

S. C. affirmed on appeal to Privy Council. *BERRY v. ELIATTA*. [12 W. R., 33: 13 Moore's I. A., 104]

35. **Settlement with talukdar after his refusal to re-settle at increased rent—Wives of refusal to pay enhanced rent.**—Where, upon a talukdar's refusal at the end of the period of his settlement to re-settle with Government at an increased rate, the jumma was put up to auction, after which the Government did re-settle with the talukdar upon the former conditions and the former description of the nature of the taluk, it was held that Government renewed the contract, and placed the talukdar in exactly the position in which he would have stood had he never refused to pay the increased rent. *GENES COOMAR ROY v. KUNDA KANT ROY*. 11 W. R., 38

36. **Private rights—Limitation—Right of action as proprietor.**—Certain land having been settled by Government for a period of ten years, one S bought the benefit of that settlement at an auction-sale for arrears of rent, and afterwards sold his rights to one M. On the expiration of the temporary settlement, Government effected a permanent zamindari settlement with M. In the following year

SETTLEMENT—continued.

6. EFFECT OF SETTLEMENT—continued.

revenue for the term of settlement, and the settlement was made under s. 5, Regulation XIII of 1825, and paragraph 151, circular order, Sudder Board of Revenue, as provided by s. 5, Regulation XXXI of 1808. *Held* that they were in possession as owners, and on the expiry of the settlement the mere fact of its having expired would not deprive them of the right of being assessed with revenue as proprietors of mah land, for where there has been a grant of soil, and possession taken and long continued thereunder, the ownership thereof vests in the grantee, although the grant as to exemption from payment of revenue may be invalid and subject to assessment. *TOORSEE RAO v. NARAY SINGH*. [13 Agra, 265]

28. **Resumed mahul lands, Settlement of—Adverse possession.**—Where owing to the refusal of the original possessor of a resumed mahul land to fulfil the revenue engagements the settlement was made with a stranger. *Held* that such settlement could not confer upon him any right adverse to the original possessor after the expiration of that settlement, when the original possessor is entitled to claim settlement. *MAHOMED AYTA-OO-TAH v. MAHOMED MOHTA-OO-TAH*. 1 Agra, 231

29. **Liability for rent—Beng. Reg. VII of 1822—Holder of resumed lakhtaj.**—The holder of resumed invalid lakhtaj land, within a Government khas meha, was bound to pay rent according to the settlement of the revenue authorities under Regulation VII of 1822, until he sued in the Civil Court to set aside that settlement, or sued under Act X of 1859 for a mitigation or re-settlement of rent. *HURO PERSHAD CHOWDHRY v. SHAKA PERSHAD ROY CHOWDHRY*. 6 W. R., Act X, 107

30. **Lakhtajdar in Assam—Holder of resumed grant—Right of ejectment.**—Whatever might have been his position under former Governments, a lakhtajdar in Assam is entitled to manage his lands in any manner he pleases consistently with existing regulations, and as holder of a resumed grant which has been settled with him, to eject a tenant who has no right of occupancy or lease of any kind. *JUDOW SOOMA PATWARRA v. MADHUB RAM AYOTI BOORHA BHUKTU*. [16 W. R., 202]

31. **Effect of resumption and settlement of lakhtaj—Invalid lakhtaj.**—Assessment of revenue by Government upon invalid lakhtaj land after resumption does not confer a new estate on the lakhtajdar, and does not cancel or extinguish a mokurati lease granted by the lakhtajdar previously to the settlement and during the time he was in possession of the land as lakhtaj. *PRATAP NARAYAN MOOKERJEE v. MADHUB SUDAN MOOKERJEE*. 8 B. I. R., 197: 16 W. R., 35

32. **Abadkari talukdar—Acceptance of farming leases—Sale of Government rights.**—A Government settlement, whether permanent or farming, so far from destroying the rights of a talukdar, always preserves them if there be really a dependent tenure. Neither the acceptance

SETTLEMENT—concluded.**8. EXPIRATION OF SETTLEMENT—concluded.**

reforming or cancelling such sanads against mistakes, other than those relating to ownership, which may be found to exist in the sanads. DARSANG BHAYSANG v. COLLECTOR OF KAIRA [I. L. R., 4 Bom., 367]

44. Liability to ejectment—

Dependent talukhdars.—Dependent talukhdars re-admitted to temporary settlements for a certain number of years are not liable to ejectment at the close of those settlements. HIRGOBINDO Doss v. KARA CHAND SHANA . 6 W. R., Act X, 26

45. Disposition—Cause of action—When a dependent talukhdar—

that settlement placed in abeyance by the Collector taking the collections into his own hands khas, the Collector's act is not one of dispossession from which limitation can count, but limitation will reckon from the date when the purchaser, at a sale after the Collector had ceased to hold khas, had himself made collections, and so created cause of action by dispossession of the former talukh. MYRNOODDAR v. RAMANORAY CHOWDHRAIN 7 W. R., 182

46. Shikmi talukhdari right—

Payment in lieu of shikmi talukhdari right.—Where a shikmi talukhdar accepted from Government a pottah which admitted him to be a person having a right to a settlement and gave him as a separate and distinct allowance under the head of expenses (in addition to the usual allowance for collections, etc.) the allowance which had, under the previous settlement, been made to him under the head of malikana, *Held* that, if he had notice and accepted the payment because he knew that his right as malik of the shikmi talukh was no longer recognized, then the shikmi talukhdari right came to an end at that time. [24 W. R., 247]

SETTLEMENT AWARD.

See CASES UNDER ACT XIII OF 1848.

SETTLEMENT OFFICER.

See LIMITATION ACT, 1877, ART. 180 (1871, ART. 180)

See MADRAS FOREST ACT, S. 4.

See PUBLIC OFFICER.

See SERVICE TENURE.

See SOUTHAL PERGUNNAH SETTLEMENT REGULATION . I. L. R., 18 Cal., 146

Act or order of—

See BENGAL TENANCY ACT, S. 104.
I. L. R., 20 Cal., 579
I. L. R., 23 Cal., 257

SETTLEMENT OFFICER—continued.

See DECREE—CONSTRUCTION OF DECREE—HINDU WIDOW I. L. R., 17 Cal., 246
See KHOTI SETTLEMENT ACT, SS. 20 AND 21 . I. L. R., 18 Bom., 244
See LANDLORD AND TENANT—CONSTRUCTION OF RELATION—GENERALLY [I. L. R., 16 All., 209
See LIMITATION ACT, 1877, ART. 14.
I. L. R., 18 Bom., 244
See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [I. L. R., 23 Cal., 257
Application to—
See GUJARAT TALUKHDARS ACT, S. 10.
[I. L. R., 16 Bom., 408
Decision of—
See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N. W. P. LAND REVENUE ACT. . I. L. R., 18 All., 172
See CASES UNDER KHOTI SETTLEMENT ACT, SS. 17 AND 20.
See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, S. 622.
[I. L. R., 21 Cal., 935
Entry in record of—
See CASES UNDER KHOTI SETTLEMENT ACT, S. 17.
Order on appeal from—
See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 16 Cal., 596
I. L. R., 16 Bom., 408
I. L. R., 21 Cal., 935
I. L. R., 22 Cal., 477
I. L. R., 24 Cal., 462
I. L. R., 25 Cal., 146
Power of—
See BENGAL TENANCY ACT, SS. 101—115.
[I. L. R., 20 Cal., 577
I. L. R., 21 Cal., 378
I. L. R., 27 Cal., 364
See BENGAL TENANCY ACT, S. 102.
[I. L. R., 21 Cal., 38
I. L. R., 22 Cal., 244
See BENGAL TENANCY ACT, S. 103.
[I. L. R., 19 Cal., 641, 643
Statement of facts by—
See EVIDENCE ACT, 1872, S. 37.
[I. L. R., 21 Bom., 695
Suit to set aside order of—
See SOUTHAL PERGUNNAH SETTLEMENT REGULATION . I. L. R., 18 Cal., 146

SETTLEMENT OFFICER—continued.
the second clause of s. 162, s. 10 of Act XIV of 1863 enacted that, if a suit for enhancement of rent

[6 N W, 64

[23 W, R., 640

Power of, in Son.

valid reference can be made in a settlement case in the Central Pergunnahs by a settlement officer. **TANJIT PRASAD MISHRA v. MANABAD CHOWDHURY** [6 C. L. R., 555

SHAREHOLDERS.

Liability of—

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITIES OF SHAREHOLDERS

Right of—

See COMPANY—MEMBERS AND VOTING [L. L. R., 15 Bom., 164
See COMPANY—RIGHTS OF SHAREHOLDERS [L. L. R., 19 Bom., 1
L. R., 21 A. A., 139

SHARE WARRANTS.

Stamp on—

See MAJISTRATE, JURISDICTION OF— SPECIAL ACTS—COMPANIES ACT [L. L. R., 20 Calo., 970

SHARES.

See CASES UNDER COMPANY

Agreement relating to sale of—

See BENTLEY ACT, 1879, sec. 1, ART. 2. [L. L. R., 13 Mad., 255
L. L. R., 14 Bom., 319

Assignment of—

See ISOLATION—ORDER AND DISPOSITION. [L. L. R., 3 Bom., 643

Cancellation of—

See COMPANY—HOURS, DATES, AND LIABILITIES OF DIRECTORS. [L. L. R., 20 Bom., 654

[L. R., 14 A. A., 137

Power of settlement officer

—Question of payment and right to possession

—Mortgage and usufructary mortgage—

The duty of the settlement officer is to record the

fact in a usufructary mortgage is entitled to pos-

session by reason of the satisfaction of the debt out

of the usufruct. **DIRHO HAI v. GORAN DION**

[3 Agra, 303

Power of, in

making entry in jummalahs. A settlement officer,

rights of cultivators, and cannot impose an embargo

rent without notice on those entitled. If he enters

a higher rate in spite of protest, such entry does not

conclude the tenant from pleading non liability.

LALUJI v. DOONDA BHOJA DOONDA [WATSON & CO.

—Doonda Bhoja Doonda [21 W. R., 410

Act XIV of 1863. s. 23—The

—Application under Act X of 1859, s. 23—The

powers which the Government was authorized by Act

of 1859, s. 23—The

—Act XIV of 1863, s. 23—The

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—Act XIV of 1863, s. 23—The

—Act XIV of 1863, s. 23—The

—Act XIV of 1863, s. 23—The

—Act XIV of 1863, s. 23—The

SHARES—continued.

"Holding shares," Meaning of—
See DECORATORY DROKEN, SUIT FOR—
[I. L. R., 17 Bom., 197

Sale of—

See CONTRACT—CONTRACTS FOR GOVERN-
MENT SECURITIES OR SHARES.
[2 Bom., 260, 267, 272, 2nd Ed., 246, 253, 258
3 Bom., O. C., 9, 69, 79
1 Ind. Jur., N. S., 17

Transfer of—

See CASES UNDER COMPANY—TRANSFERS
OR SHARES AND RIGHTS OF TRANSFERS.
Transfer of, Registration of—
See BANK OF BENGAL.
[I. L. R., 3 Cal., 392

1. Transfer of shares—Bank

transfer—Cause of action.—Shares in the National Bank were sold by the allottee, and a transfer in the form required by the articles of association of the Bank was executed, but no name was inserted as transferee. The purchaser pledged them with the I. P. L. and China Bank, and deposited with them the blank transfer. This Bank applied to the National Bank without producing a letter from the pledgor to register their lien, and on its refusal sold the shares to the plaintiff and delivered to him the transfer, also in blank. The plaintiff inserted his own name in the transfer, and requested the National Bank to register the shares in his name. In an action against the National Bank to recover the price of the shares,—*Held* also that they were justified in refusing to register. *Held* also that the plaintiff, having received back from his vendors the price of his shares, had no cause of action. KNOWLES v. NATIONAL BANK OF INDIA 2 B. L. R., O. C., 158

2. Transfer by way

of pledge—Right of transferee to have transfer registered and to have dividends.—A and B, proprietors of indigo factories, sold them to the B Company, receiving in part payment 1,000 fully paid-up shares of the company, which was a company registered under Act XIX of 1857, A and B covenanting to indemnify the company from all loss and to guarantee a dividend of 8 per cent. for the term of two years. A being indebted to C, deposited the shares with him as a security for the debt. C gave notice of this to the company before he made the advance to A, and the company assented to the deposit. A and B afterwards became jointly indebted to the company in respect of the covenant and guarantee. *Held* that C was entitled to have the deposit of the shares registered in the books of the company, and to be paid dividends upon them. PETERSCH v. EASTERN BENGAL INDIGO COMPANY [1 Ind. Jur., N. S., 278

But where the deposit by A was accompanied by a contract with a power of sale of the shares, but nothing was said about receiving the dividend,—*Held* that, under this contract of A, C could not receive

SHARES—continued.

the dividend, though he could under a contemporaneous general power of attorney from A. ROYAL BANK OF INDIA v. EASTERN BENGAL INDIGO COMPANY 1 Ind. Jur., N. S., 281

3. Blank transfers—

Tenders.—On the 19th April plaintiff sold to defendant sixty shares in the N Bank, to be delivered and paid for on Thursday, April 26th. The sold note was as follows: "Baboo Lall Mohan Mullick. Sold by your order, and on your account, to Messrs. Peary Chand Mitter and Sons (Metcalfe Hall) sixty shares in the N Bank at Rs. premium per share. (Signed) Sree Coomarr Street, Broker." The bought note received from defendant the following: "With reference to the sixty N Bank shares sold by you, we shall thank you to send us three transfer deeds on Friday next, viz., two for twenty-five shares each and one for ten shares." On the 26th April plaintiff sent to defendant sixty N Bank shares, some standing in the name of H and some in the name of P, accompanied by transfers, all executed by P alone. These shares were all returned by the defendant, with the following memorandum: "The accompanying shares in the N Bank purchased for delivery to-day are not in order." Later on the same day, the 26th, plaintiff took personally to defendant the same sixty shares with transfers, executed some by H and some by P, the name of the transferor corresponding number by number with the name in the shares. On this, as on the previous occasion, the name of the transfer was left blank. These shares were also rejected by the defendant as not in order. Plaintiff then, on April 27th, about 1 P.M., had the shares registered in his own name, and within two hours afterwards, sent them to the defendant with corresponding transfers, and with the following letter: "In compliance with request in your memorandum of the 23rd instant, I now send you the sixty shares N Bank, with three transfer deeds, and will feel obliged by your paying the amount to the bearer." The defendant declined to receive the shares, and they were re-sold at a loss. The plaintiff never had any personal interest whatever in the shares, either on the 26th or 27th April, and was a mere benami holder for H and P. The articles of association of the N Bank required transfers to be in the form F appended to Act XIX of 1857. The transfers tendered by plaintiff were on each occasion in that form. The defendant swore that the "F" in that form, mentioned in their memorandum of the 23rd April, was inserted by accident, instead of Thursday, the 27th April, and that they consequently rejected the tender on the 27th. *Held* (1) that the contract, as it stood on the bought and sold notes, was a contract by the vendor having made coupled with the fact of the vendor having made transfers of the shares, was evidence enough to show that the vendor bound himself to tender a proper conveyance to his vendees. (3) That the document of conveyance must be complete at the

SHERIFF—concluded.

3. —Compromise after

attachment of property and before sale.—Where property is attached by the Sheriff after judgment and the parties come to a compromise before the Sheriff sells any of such property, the Sheriff is only entitled to poundage on the amount received by the execution creditor in compromise of his claim. IN THE MATTER OF BOMBAY JOINT STOCK CORPORATION. IN RE SHERIFF OF BOMBAY

[6 Bom., O. C., 22

4. —Sale by Sheriff—

Civil Procedure Code (Act XIV of 1882), s. 214, cl. (c), ss. 287, 311, 313—Belchamber's Rules and Orders of High Court, Calcutta 583—386—Deficiency in area of land—Application by purchaser to set aside sale or for compensation.—A purchaser at an execution sale of immovable property held by the Sheriff applied to set aside the sale or for compensation on the ground of deficiency in the area of the land sold. Held that such an application in relation to sales held by the Sheriff was not sanctioned by any provisions of the Civil Procedure Code, and s. 313 did not apply. Held also that, as the interest of the purchaser was adverse to the interest of the judgment-debtor, the former was not the representative in interest of the latter, and therefore s. 214 of the Civil Procedure Code did not apply. *Ishan Chunder Sirkar v. Beni Madhab Sirkar*, I. L. R., 24 Cal., 62, applied. Sales by the Sheriff differ from sales by the Registrar direct that compensation shall be allowed for errors and misstatements, if capable of compensation, while no such condition is imposed on sales by the Sheriff. *RAY NARAYAN v. DWARKA NATH KHETTER* . I. L. R., 27 Cal., 264 [4 C. W. N., 13

SHIKMI TALUKDARS.

See SETTLEMENT—EVIDENCE OF SETTLEMENT.

[3 W. R., P. C., 5: 10 Moore's I. A., 185

See SETTLEMENT—RIGHT TO SETTLEMENT.

[W. R., 1864, 262

SHIP.

—at anchor, Duty of—

See SHIPPING LAW—COLLISION.

[I. L. R., 24 Cal., 627

—Loss of—

See CONTRACT—CONSTRUCTION OF CONTRACTS

[I. L. R., 13 Bom., 15

—Measurement of—

See MERCHANT SHIPPING ACT, SS. 24, 26. [I. L. R., 14 Bom., 170

SHIP—concluded.

—Seaworthiness of—

See BILL OF LADING

[I. L. R., 13 Bom., 571

See CONTRACT—CONDITIONS PRECEDENT.

[2 B. I. R., O. C., 127

See INSURANCE—MARINE INSURANCE.

[5 Moore's I. A., 361

Cor., 5: 2 Hyde, 107

SHIP, ARREST OF—

See ARREST—CIVIL ARREST.

[1 Hyde, 253

See COSTS—SPECIAL CASES—ADMIRALTY

OR VICE-ADMIRALTY.

[I. L. R., 17 Cal., 84

See SAVAGE . I. L. R., 17 Cal., 84

—Deposit of security with Marshal—Application for arrest of deposit in another action—Admiralty Court, Practice of.—The ship *M*, having been arrested in an action promoted by the master of the ship *N* for damage caused by a collision, in which the *N* with her cargo was totally lost, deposited with the Marshal of the Court certain Government paper as security to answer the alleged damages, on which the *M* was released. The cargo of the *N* had been insured, and on the loss thereof the Insurance Company paid the amount of the policy, and instituted proceedings against the *M* in respect of the loss of the cargo. Held the Court had no power to grant an application by the Insurance Company for the arrest of the security in the hands of the Marshal, so as to make it answerable in their action. *TRITON INSURANCE COMPANY v. "MOORHILL."* IN RE "MOORHILL."

[15 B. I. R., Ap., 3

SHIP, REGISTERING OF—

—British ship—Stat. 3 & 4 Vict., c. 56

—Act X of 1841—Ship built in foreign port—

A ship built in a foreign port in India in 1817, within the limits of the Company's charter, by foreigners, and which sailed under foreign flag until 1838, when it was then and thereafter owned by and belonged to British subjects, resident at Bombay, held to be entitled, under the proclamation of the Governor General in Council under 3 & 4 Vict., c. 56, and the Act X of 1841 of the Legislative Council of India, to be registered at Bombay as a British ship, for the purpose of trade within the limits of the Company's charter. *CRAWFORD v. SPOONER*

[4 Moore's I. A., 179

SHIP, SALE OF—

See BOTTOMRY BOND . 5 B. I. R., 258

[6 B. I. R., 323

—Sale in execution of decree

—Form of transfer—Merchant Shipping Act, s. 55

SHIPPING LAW—continued.

of any of the vessels subsequently collided with. *Held* that liability for damages occasioned by collision rests, *prima facie*, on the colliding vessel. That ship in port is bound to be prepared for such exigencies only as might be expected to arise from the circumstances she knew to surround her, that is, a ship is protected by the port rules from liability for damage only when it is due to the acts or omissions of the officials in charge of her. *Held* also that the ship is liable for all the consequences occasioned by accident that results from any defect in her equipment, or want of care or skill of her crew, etc. *Held* on appeal that an accident to the gear of ship does not of itself alone render her liable for damages for a collision of which it is a remote occasion; and that a ship at anchor in the port should keep a look-out, and be ready to take all reasonable means for her own safety in an emergency. "THALATTA" v. "ANNE". BOURKE, A. O. C. 8.

3. Liability of ship for fault of pilot.—Port Rules, 1856—Act XXII, 1855.—The ship *H*, in charge of a pilot (acting as harbour-master), when proceeding across the bow of the ship *I*, which was at anchor, to take up a clew mooring, came into collision with and slightly damaged her, and this suit was for the damage so occasioned. Both sides relied on Act XXII of 1855 and the Port Rules of 1856, the plaintiff contending that the officer in charge was not such officer as the said Act and Rules referred to; and the defendant that a ship is *prima facie* liable for damages occasioned by a collision resulting from an error in judgment of the officer in charge of her. *Held* also that a vessel is exempted from liability for the fault of a pilot in charge of her, where a master is authorized to employ a pilot, and is exempted from responsibility for the acts to do so; and, secondly, where the employment of a pilot is compulsory, and the owners of the vessel so employing him are relieved from responsibility for his misconduct; that the legislation regarding the employment of pilots and other officers in the port of Calcutta is contained in Act XXII of 1855 and the Port Rules of 1856; that there is no special regulation made by the port authorities, under rules 2 and 7, a ship may make her discretion in the port; and that it is unlawful, under s. 12 of Act XXII of 1855, for a master to take command of the ship. In the *MATTER OF THE "HANOVER"*. BOURKE, A. D. 15.

4. Collision from bore in the river.—Inevitable accident.—The ship *Zhames* was lying in a mere bulk, waiting for repair when a bore drifted her stern foremost up the river, and she came into collision with another ship. No negligence was proved against the master, and the accident was held to be inevitable, and no costs were decreed on either side. *ABDOOLA ROMANAN MOOSAY v. "THAVES"*. BOURKE, A. D. 21.

5. Moving vessel in harbour.—Act XXII of 1855.—Negligence of pilots in charge of vessels.—The taking of a steam-vessel in a tow or show.—*Bombay Harbour Rules—Lighthouses, Duty*

SHIPMENTS—concluded.

account, the defendant admitted he had sold the bills and received the money for them; they were produced by the plaintiffs, the acceptors. *Held* that the bills being produced by the acceptors after due date, and the defendant having received a notice of dishonour, and no demand for payment of the bills, the presumption was that they had been paid by the plaintiffs. In exercising their option of treating shipments in excess of their limits as on their own account or as consignments on account of the defendant, the plaintiffs were entitled to treat each shipment separately, and were not compelled to decide on an average of the shipments taken all together. *SHEARMAN v. FLEMING*. 5 B. L. R., 619.

2. Bills of lading fraudulently signed.—Title of endorsees for value against holder of mate's receipts who has not paid.—The plaintiffs agreed with the defendant *K M* to purchase and ship cotton on account of *K M* and until the purchase-money should be paid by *K M*. Under this agreement the plaintiffs shipped 609 bales on board the *Teresa*. Before the greater part of the 609 bales had been shipped, and before paying for the same, *K M*, without production of the mate's receipts, induced the master of the ship to sign bills of lading for the said 609 bales, and endorsed over the bills of lading for 310 of such bales to *J C & Co.*, bond *fide* endorsees for value without notice. In a contest between the plaintiffs, holders of the mate's receipts and *J C & Co.*, endorsees for value of the bills of lading of the said 310 bales, it was held that the plaintiffs were entitled to the possession of the 310 bales to the exclusion of *J C & Co.* *RAJABAX GOVINDRAJ v. BROWN*. 7 Bom. O. C., 97.

SHIPPING LAW.

1. Certificates.—Suspension or cancellation of certificate.—Act I of 1859, ss. 201, 202.—The local tribunal in India, appointed under ss. 201 and 202 of Act I of 1859, can suspend or cancel the British certificate of a master or mate, and for that purpose its report need not be confirmed by the local Government. *EX-PARTE HURST*. IN THE MATTER OF STEAMSHIP "JASON". 1 Mad., 270.

2. Collision.—Collision in port.—Port Rules, 1856.—Liability of ship for damage.—The ship *T* having got adrift in a dark night, in consequence of a collision, the harbour-master tried to anchor her, but failing to do so, as her cable jammed, finally brought her up inside the ship *A*, which was moored off the Howrah side of the Hooghly, this being the only berth the *T* could then secure. The next flood swung both ships, and the *T* fouled the *A*, damaging her, and causing her to part her cables, in consequence of which she suffered further damage from subsequent collisions. The owners of the *A* sued the *T* for the whole damage done. The defence was that the promovees, by adopting certain precautions, might have prevented the accident; that the *T*, being in charge of the port authorities, was not liable, and that no care or skill on her part could have prevented the accident. The *T* did not allege a liability

Cancellation of—

See COVENANT—ALLOCATION OF COSTS.

TRACTS—ALLOCATION AT THE COURT.

[I. L. R., 8 Bom., 242]

Comparison of—

See DECREE ON SECOND APPEAL—

GROUPS OF APPEAL—HYDERABAD, MUMBAI

[193 W. R., 272]

of fallow.

See CIVIL PROCEDURE CODE, 1882, s. 87

[4 B. L. R., O. C., 61]

of Judge

See ELECTION OF DEPUTY JUDGES

OF DEPUTY JUDGES FOR ELECTION AND

POWER OF COURT, ETC.

[I. L. R., 23 Cal., 480]

out—

of Magistrate, Warrant with—

See PUNJAB CODE, s. 156

[I. L. R., 23 Cal., 886]

of witnesses to bond.

See COVENANT—ALLOCATION OF COSTS.

TRACTS—ALLOCATION AT THE COURT.

[I. L. R., 7 Bom., 418]

[I. L. R., 12 Cal., 218]

[I. L. R., 16 Bom., 44]

[I. L. R., 16 Mad., 70]

Proof of—

See EVIDENCE—CIVIL CASES—MATERIAL.

TRACES—DOCUMENTS—SIGNATURE.

[I. L. R., 11 Bom., 600]

[I. L. R., 21 W. R., 5]

Sanctioning of—

See COVENANT—ALLOCATION OF COSTS.

TRACTS—ALLOCATION AT THE COURT.

[8 B. L. R., 306]

[11 W. R., 216]

to Memorandum of Association.

Effect of—

See COMPANY—ARTICLES OF ASSOCIATION

AND LIABILITY OF SHAREHOLDERS.

[I. L. R., 13 Bom., 617]

[I. L. R., 11 Bom., 106]

See LIMITATION ACT, 1877, s. 19 (1871).

See COMPANY—ARTICLES OF ASSOCIATION.

See COMPANY—ARTICLES OF ASSOCIATION.

SIGNATURE—continued.

See NOTICE—FORECLOSURE—DEMAND

AND NOTICE OF FORECLOSURE

[I. L. R., 16 All., 50]

See PRACTICE—CRIMINAL CASES—BONA.

THE OR MAGISTRATE.

[I. L. R., 6 Mad., 396]

See WARRANT OF COMMITMENT

[I. L. R., 6 Mad., 396]

See CASES UNDER WARRANT—ATTENTION

[I. L. R., 25 Cal., 911]

Signature of Rajah—Title

without name—A signature of a Rajah of the ancient

Rajah family was held to be valid, even though it

did not contain the name of any particular individual

GUJARAT WAS A SACRED RITE CHANDRA

[18 W. R., 386]

Signature of Magistrate—

Lithographed stamp of signature—A Magistrate

ought not to use a lithographed stamp of his signature

QUESTIONS UNDER WARRANT—ATTENTION

[I. L. R., 25 Cal., 911]

SIR LAND.

Description of—Bail in return

records of land as are will not make it a land. Sir

land is land which at some time or other has been

cultivated by the zamindar himself, and which, al-

though he may, from time to time, for a season, devote

to agriculture, he designs to retain as revenue for his

cultivation by himself or his family whenever he

requires it. BURLINGTON v. BURLINGTON

[I. L. R., 13 Mad., 34]

See DEEDS—I. L. R., 14 Bom., 97

See PARTIES—ADVERSE PARTIES TO SUITS

—PLAINTIFFS I. L. R., 16 Cal., 284

[I. L. R., 10 All., 425]

See WITNESSES—CIVIL CASES—WITNESSES

[I. L. R., 15 Cal., 284]

[I. L. R., 10 All., 425]

[I. L. R., 11 Mad., 477]

of title.

See DECLARATION OF TITLE.

[I. L. R., 1 Mad., 95]

Action for slander—MAYSON

See SPECIAL DAMAGES—An action for slander can-

not be brought jointly against several defendants

separate actions should be brought against each

STANDER—continued.

Quere—Whether words implying "you are a drunkard, thief, cheat, and the paragon of your sister-in-law, you bastard," applied to a Brahmin, are actionable *per se* without allegation of special damage. *NIMADPUR MOOKREJ v. DOORBARA KHOTTA* [15 B. L. R., 161]

Misjoinder—An action for slander may be brought jointly against several defendants where the words spoken are not actionable *per se*, but only become so by reason of the special damage, which is the result of the conjoint action of all the defendants. *WOZZERUNISSA BIRRE v. MAHOMD HOSSEIN* 15 B. L. R., 166 note

Omission to give courtesy title in petition—The omission of a mere courtesy cannot be taken to be equivalent to slander in or libelling a man, and is not an actionable wrong. *SITAPAXA KRISHNA RAYADAPPA RANGA RAO v. SANVASI RAO PEDDA BATTARA SIKHUTU* [3 Mad., 4]

Slander and assault—Special damage.—Special damages are not necessary to be proved in a case of slander and assault. *HOSSEIN v. BAKIR ALI* [W. R., 1864, 302]

Verbal abuse—*Hindus*—Special damage.—In a suit between Hindus in the Bombay mofussil, damages may be recovered for mere verbal abuse without proof of actual damage resulting therefrom to the plaintiff. *KASHIRAM VALAD KRISHNA v. BHADU BAVRU* [7 Bom., A. C., 17]
Damages for verbal abuse—Damages cannot be claimed for mere verbal abuses or threatening language. *PHOOT-BASSE KORE v. PARJUR SINGH* 12 W. R., 369

Verbal abuse—Special damage.—While C was giving his evidence in open Court, in a suit of A against B, A, with the object of inducing the Judge to disbelieve C's testimony, said to the witnesses that he was a drunkard. *Held* that the words were actionable without proof of special damage. *SRIKANT ROY v. SATCOMI SHABA* 3 C. L. R., 181

See SREENATH MOOKREJ v. KOMTU KURMOKAR [16 W. R., 83]

KATI KUMAR MITTER v. RAMGAT BHUTTA-CHARTI [6 B. L. R., Ap., 99: 16 W. R., 84 note]

KANOO MUNDLE v. RAHUMOOTLAH MUNDLE [W. R., 1864, 269]

GHOJAM HOSSEIN v. HUR GOBIND DASS [1 W. R., 19]
TURKE v. KHOSHDEL BISWAS 6 W. R., 151

OSSEEMOODDEEN v. HUTTEN MAHOMD [7 W. R., 259]
GOUR CHUNDER PUTEERUNDE v. CLAY [8 W. R., 256]

STANDER—concluded.

Defamation—Action for abuse, no special damage being alleged—The rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. If defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that his reputation has been injured, and to inflict on him pain consequent on such belief, the plaintiff is entitled to recover damages without actual proof of loss sustained. *Semble*—An action will lie for vulgar abuse or hasty expressions, but for malicious or culpable oral defamation an action will lie. Vindictive damages should not be awarded, and a distinction should be drawn in awarding damages when the defendant acts from carelessness and when he acts maliciously. In the latter case the plaintiff is entitled to full compensation for the pain suffered and in the former to a sum sufficient to establish his innocence of the charges made. *PARVATHI v. MANNAK* 1. L. R., 8 Mad., 176

Defamation—Verbal abuse—Special damage—A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. *IWIN HOSSEIN v. HADAR* [1. L. R., 12 Cal., 109]
Defamation—Consequential damage—A suit for damages for defamation of character involving loss of special position and injury to reputation will lie without proof of special damage. *PARVATHI v. MANNAK, SHAHA, 3 C. L. R., 181*, followed. *TRAIPOKKA NATH GHOSE v. CHUNDBA NATH DUTT* [1. L. R., 12 Cal., 424]

Damages for insult, loss of reputation, and mental pain by the use of abusive language—Suit for libel and slander—Special damage—*Held* by the majority of the Full Bench (MAOZAN, C. J., MACGREGOR, HILL, and JENKINS, J. J., dissenting) that the mere use of abusive and insulting language, such as sala (wife's brother), baramzada (base born or bastard), soor (pig), baper beta (son of the father, that is, ironically, bastard), apart from defamation, is not actionable irrespective of any special damage. *Per GHOSE, J.*—A case like the present should be decided according to the principles of justice, equity, and good conscience, and therefore it is but just and right that a person thus vilified, who has suffered from insult and mental pain, should be entitled to maintain an action irrespective of any special damage. *GHISH CHUNDER MITTER v. JATADHARI SADUKHAN* [1. L. R., 26 Cal., 668]
3 C. W. N., 551

SLAUGHTER-HOUSE.

See NUISANCE—UNDER CRIMINAL PROCEEDINGS 7 B. L. R., 489, 516
DURE COPES 25 W. R., Cr., 72

share the possession to the exclusion of his natural heirs, the effect of s. 3, Act V of 1813, which enacts that no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground that

been emancipated after the passing of the Act, but also where he has been emancipated before its passing. The exclusion of the natural heirs of an emancipated slave in favour of the heirs of his emancipator is disability arising out of the status of slavery. Mohammedan law, of the natural heirs of an emancipated slave by a master or his heirs, and since the general scope and object of Act V of 1843 is to remove all such disabilities, the Civil Courts are

16 D. L. R., AP, 28: 14 W. R., Cr., 67

2. _____ Beng. Act VII of 1865, s 1 - servant of licensee - No person is liable to the penalty under s 1 of the Bengal Act VII of 1865.

[illegible]

Act VII of 1904, Municipal Commissioners for
the Districts of Calcutta & Ajmer
[W. R., C., 4
3. — Notice to licensees of
single-house — *ibid.*, Act VII of 1905 — The
licensing of hotels to permit holding in
them for carrying on single-house and public
houses must be determined in each case
according to its own particular circumstances. In
re *Hallam* & W. R., C., 77]

STAVISKY
NEW YORK OFFICE
[L. H. 10 Cal., 673]

7
A V 10-1-1937
—Junction—Hillside
Assuming that by the will rule of the Massachusetts
law, the heirs of the master who transported a slave
are entitled to the property which the master had

SMALL CAUSE COURT, MOUSSIL.

ARMY ACT	8610
ATTACHMENT	8611
CEAS	8611
CLAIM TO PROPERTY SEIZED IN EXERCISE	8611
COMPENSATION FOR ACQUISITION OF LAND	8616
CONTRACT	8621
CONTRIBUTION	8625
COPYRIGHT	8625
COSTS	8625
CHOPS	8625
CUSTODIARY PAYMENTS	8625
DAMAGES	8626
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DEED	8634
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ENDOWMENT	8635
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IMMOVABLE PROPERTY	8636
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—continued.

SLAVERY—continued.
adverse possession of the defendant from that year was fatal to any claim of the plaintiff under such agreement. (GIRANA SAMBASARA PASARANA SAK-KADUI v. KANDASAWATI PASARANA)

[I. L. R., 10 Mad., 376]

SLAVERY (CRIMINAL CASES).

1. —Penal Code, s. 370—Buying or disposing of girl as a slave—A, having obtained possession of B, a girl about seven years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent. Held that A could not be convicted of disposing of B as a slave under s. 370 of the Penal Code. (Queen v. Sivanandur, Bayan, 3 N. W., 146, remarked upon. Kurness or Isipia v. Hani Kuran. I. L. R., 3 All., 723)

2. —Treating kidnapped girl as slave.—If, knowing a girl has been kidnapped, a person wrongfully counts her, and subseparately offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailer. (Queen v. Sivaperum, Buxant. 3 N. W., 148)

3. —Obligation of Judge to try charge of.—The Sessions Judge was held bound to try the accused upon his commitment by the Deputy Magistrate on a charge, under s. 370, Penal Code, of having detained a woman against her will as a slave. (Queen v. Pinnayy Ali. 16 W. R., Cr., 73)

4. —Meaning of term.—S transferred to A for Rs. 25 his rights in the person of B, a girl of thirteen years. In a document in which the transaction was recorded by S described as a well-to-do slave girl purchased by S. Held that A was guilty of buying B as a slave within the meaning of s. 370 of the Penal Code. (Amira v. Queen-Ekperness. I. L. R., 7 Mad., 277)

SMALL CAUSE COURT, MOUSSIL.

Col.

1. LAW OF SMALL CAUSE COURTS,

MOUSSIL.

2. JURISDICTION

GENERAL CASES.

DWELLING OR CARRYING ON BUSINESS

ACCOUNT

ACT XL OF 1858

ALTERNATIVE RELIEF

ARBITRATION

SMALL CAUSE COURT, MOUSSIL
—continued.
2. JURISDICTION—continued.

Procedure Code, s. 15, refers only to Courts to which the Civil Procedure Code is applicable, and consequently Small Cause Courts have concurrent jurisdiction with Courts of Village Munsifs to hear suits which are cognizable by the latter. MIRKMAN v. KADASA

by District Munsif in jurisdiction of Small Cause Court.—A suit was brought in the Small Cause Court to recover two sums of money, one cause of action sold and delivered. The amount of both for goods within the jurisdiction of the Small Cause Court, but the District Munsif on each case was cognizable by the Small Cause Court and jurisdiction to entertain the suit. ARUMACHARI v. CHETTY

able against some of the defendants.—A suit not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants. PARSHO. TANKHAT v. PEMA HARI

[I. L. R., 21 Bom., 121

and the whole amount of which is beyond jurisdiction.—A Small Cause Court can try a suit for an amount within its jurisdiction, notwithstanding that upon a bond the amount of which is beyond its jurisdiction. SURE MOORE DEBIA v. HURE. TON MOORE

which more than Rs 500 are payable.—That action of a Small Cause Court, in a suit on a because damages not exceeding Rs 500, is not under the same kabulat. SMITH v. GOVAL

under agreement.—Where the plaintiff's portion of grain in the nature of net rent is paid under the agreement would be in a Court of Small Causes. NARASIDA

more than Rs 500.—Where a suit was interest amounting to less than Rs 500, and for Rs 1,000, not then had jurisdiction of Small Causes had payable, the plaintiff having had a separate and of interest as it accrued due. The action upon the bond entitling him to interest is set up as a defence

[2 Mad., 469

AN v. GANAPAT AITAN
e. ANANTHA NARAYANAPPAI
of the bond is set up as a defence

DIGEST OF CASES.

SMALL CAUSE COURT, MOUSSIL

—continued.

2. JURISDICTION—continued.

AMBATON CHEV NARAYANA PILLAI v. ARAMPURAYAN

4 Mad., 444

Suit for profits—Question of title.—

The mere fact of a question of title arising does not prevent a suit of a question of title arising does not prevent a suit of a question of title arising does not

of land.—Prayer for account.—Several claims, each of which separately is within the Small Cause Court jurisdiction.—Several

joined together and form of a District Munsif, may be Small Cause Court. As where there was an agree-

ment that defendant should occupy land for two years and deliver a certain quantity of paddy at four

specified periods; in a suit for rent.—Held that, though the plaintiff might have sued for each instal-

ment of rent as it fell due, the aggregate of such unpaid instalments should be deemed to be one cause

of action. CHOCKALINGA PILLAI v. KUTAMA VIRU-

Act IX of 1850, s. 34.—Cause of action, Di-

viding.—There is no provision in the Mofussil Small Cause Courts Act (XI of 1865), similar to s. 34 of the

Presidency Small Cause Court Act (IX of 1860), which forbids a plaintiff's bringing any of the

the Small Cause Courts of the Presidency. UMER

PHOTOHAND v. PIR SAEED JIVA MIRZA

[I. L. R., 7 Bom., 134

Provincial Small Cause Courts Act (IX of 1887), s. 23.—Civil Proce-

suit cognizable by a Court of Small Causes because that Court may have exercised the discretion conferred

on it by s. 23 of the Provincial Small Cause Courts Act, and returned the plaintiff to be presented to a

title raised therein. KALI KRISHNA TAGORE v. IZZAT

SADA SHANKAR v. BHAU MOHAN DAS

[I. L. R., 20 All., 480

business.—"Dwelling"—Actual residence.—The

dwelling at the commencement of the suit, and to a temporary dwelling is sufficient to give jurisdiction

to a Small Cause Court. ANANTHA NARAYANA v.

PERIYANA KONE

17. Residence—Act XLI of 1860, s. 4.—Mere presence, or even residence in the

SMALL CAUSE COURT, MOUSSIE.

—continued.

2. JURISDICTION—continued.

CHETU NARAYANA PITAY v. AYAPERUMAL
AYAPERUMAL v. AYAPERUMAL. 4 Mad., 447

12. Suit for profits of land—Prayer for account—Question of title.—

The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYANA BHASKAR v. BAVURI BAVURI. I. L. R., 21 Bom., 248.

13. Separate causes of action each within Munsif's jurisdiction.—Several

claims, each of which separately is within the Small Cause Court jurisdiction of a District Munsif, may be joined together and form the basis of a suit in the Small Cause Court. As where there was an agreement that defendant should occupy land for two years and deliver a certain quantity of paddy at four specified periods; in a suit for rent, *Held* that, though the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalments should be deemed to be one cause of action. CHOCKALINGA PILLAI v. KUMARA VIRATHALAM. 4 Mad., 334.

14. Act IX of 1850, s. 34—Cause of action, *Def.*

riding.—There is no provision in the Mofussil Small Cause Courts Act (XI of 1855), similar to s. 34 of the Presidency Small Cause Act (IX of 1850), which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency. *Umd.* DHOONAND v. PIR SAHIB JIVA MITRA. I. L. R., 7 Bom., 134.

15. Provincial Small Cause Courts Act (IX of 1887), s. 28—Civil Procedure Code, s. 586—Suit of the nature cognizable by

Courts of Small Causes.—A suit is none the less a suit cognizable by a Court of Small Causes because that Court may have exercised the discretion conferred on it by s. 28 of the Provincial Small Cause Courts Act, and returned the plaint to be presented to a Court having jurisdiction to determine a question of title raised therein. *Kali Krishna Nagore v. Isa-an-nissa Khattun, I. L. R., 24 Cal., 557*, followed. SADA SHANKAR v. BRIT MOHAN DAS. I. L. R., 20 All., 480.

16. Dwelling or carrying on business—"Dwelling"—Actual residence.—The

actual presence of the defendant within the jurisdiction of the Court is not necessary, if he was there dwelling at the commencement of the suit, and to a Small Cause Court. ANANTHA NARAYANA v. PERIYANA KONE. 5 Mad., 101.

17. Dwelling—Casual residence—Act XLII of 1860, s. 4.—Mere casual presence, or even residence for a temporary purpose, without the intention of remaining, is not dwelling.

SMALL CAUSE COURT, MOUSSIE.

—continued.

2. JURISDICTION—continued.

Procedure Code, s. 15, refers only to Courts to which the Civil Procedure Code is applicable, and consequently Small Cause Courts have concurrent jurisdiction with Courts of Village Munsifs to hear suits which are cognizable by the latter. MIRKAY v. KADAMBA. I. L. R., 13 Mad., 145.

6. Suits cognizable by District Munsif in jurisdiction of Small Cause Court.—A suit was brought in the Small Cause Courts to recover two sums of money, one cause of action being for money lent and the other for goods sold and delivered. The amount of both claims was within the jurisdiction of the Small Cause Court, but the pecuniary claim in each case was cognizable by the District Munsif on the Small Cause Court side. *Held* that the Small Cause Court had jurisdiction to entertain the suit. ARUNACHALAM CHETTY v. GANAPATHAN ALAYAN. 5 Mad., 287.

7. Suit not cognizable against some of the defendants.—A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants. PARSIO-TAM LAKSHMINARAYAN v. PERIA HARI. I. L. R., 21 Bom., 121.

8. Suit for sum on bond the whole amount of which is beyond jurisdiction.—A Small Cause Court can try a suit for an amount within its jurisdiction, notwithstanding that it is upon a bond the amount of which is beyond its jurisdiction. *SURESH MOONAR DEBIA v. HURR-SURESH.* 3 W. R., S. C. C. Ref., 14.

9. Suit on kabuliat under which more than Rs500 are payable.—That jurisdiction of a Small Cause Court, in a suit on a kabuliat for damages not exceeding Rs500, is not affected because damages exceeding that sum may be payable under the same kabuliat. *SATYU v. GOPAL SURESH.* 3 W. R., S. C. C. Ref., 14.

10. Suit for portion of sum due under agreement.—Where the plaintiff sued for a portion of grain in the nature of net rent which had fallen due, that amount being within its jurisdiction, although the whole amount payable from first to last under the agreement would be in excess of its jurisdiction, *Held* that the suit was cognizable by a Court of Small Causes. NARASIMHA-DEVA v. MANANA KANDAN. 2 Mad., 440.

11. Suit for interest on bond for more than Rs500.—Where a suit was brought for interest amounting to less than Rs500, on a bond for more than Rs500, not then payable, *Held* that a Court of Small Causes had jurisdiction to try the case, the plaintiff having had a separate and complete cause of action upon the bond entitling him to recover the annual interest as it accrued due. The fact that forgery of the bond is set up as a defence makes no difference. ANANTHA NARAYANAPATAYAN alias ASVATA ALAYAN v. GANAPATHY ALAYAN. 12 Mad., 469.

SMALL CAUSE COURT, MOFUSSIL.

2. JURISDICTION—continued.

the strict sense of actual residence. *PODASH* *PARAY v. HACHUK*. 7 W. R., 417

and which he himself occasionally visits, does not another Small Cause Court in which his father lives, there, 35, and Court.

MAHARAJ v. GOVIND ATMAK. 10 Bom., 409

of the commencement of the suit the husband does not dwell, nor personally or through a servant or agent carry on business or work for gain within the local limits of the jurisdiction of the Court. *BOY-MAN v. SHAW*. 10 W. R., 240

Comments on *Residence—Carrying on business—A person who carries on business at a place by a commission agent—Residence—Zamindars business—Zamindar* *At XI of 1866*.

25. *At XI of 1866*.

26. *At XI of 1866*.

27. *At XI of 1866*.

28. *At XI of 1866*.

29. *At XI of 1866*.

SMALL CAUSE COURT, MOFUSSIL.

2. JURISDICTION—continued.

within the jurisdiction of a Small Cause Court within the meaning of s 4 of Act XLII of 1860

A person, residing at Coimbatore, but had some cultivated land within the local jurisdiction of Coimbatore, to which place he came to answer another demand against him. *Held* that he did not dwell within the jurisdiction of the Coimbatore Small Cause Court. *SAMRATHA PILLAI v. VARIAN MAHARAJ*. 304

to have one's permanent abode there. *MADHO DOS v. SITA RAM*. 3 N. W., 121

19. *Temporary abode—Residence—Temporary imprisonment from imprisonment beyond the jurisdiction of a Small Cause Court was held not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction and whose families continued to reside within it, the inference from the latter fact being that the defendants had an intention of returning to their former place of abode on the termination of their imprisonment.* *GOVIND CHANDER SINGH v. KARNODHAR MOONCHER*. 17 W. R., 348

20. *Dwelling—Temporary*.

21. *Residence as domicile—A suit is not maintainable at K*

have been dwelling at Meerut when the summons was served. *MATHEW v. TILLOCK*. 4 N. W., 25

22. *Residence as domicile—A suit is not maintainable at K*

23. *Residence as domicile—A suit is not maintainable at K*

24. *Residence as domicile—A suit is not maintainable at K*

SMALL CAUSE COURT, MOFUSSIL.

—continued.

2. JURISDICTION—continued.

of 1865, s. 8, that a reference to the High Court is necessary. ANONYMOUS. 8 Mad., Ap., 10

33.

Suit for debt against defendants with joint liability—Act XXIII of 1861, s. 4—A suit for debt against two defendants whose liability was joint, but one of whom at the time of filing the plaint was neither resident nor personally working for gain within the limits of the jurisdiction, might be tried by a Small Cause Court within whose jurisdiction the other defendant was resident at the time of the commencement of the suit, provided an order was obtained from the High Court under s. 4 of Act XXIII of 1861. RUMGAIR PITTAI v. CHINNASAMI PITTAI. 3 Mad., 374.

34.

One of parties out of jurisdiction—Act XI of 1865, s. 12.—In a suit brought on a bond jointly executed by the defendants, one of whom resided in Calcutta, and the other within the jurisdiction of the Munsifs Court at Alipore.—Held that it was cognizable by the Small Cause Court, although the authority of the High Court was necessary before it was tried, and no jurisdiction to try the suit. KHODA BAKSH MISTRI v. BENI MANDAL. [6 B. L. R., 719 note: 14 W. R., 156]

[6 B. L. R., 719 note: 14 W. R., 156]

35.—Account.—*Suit by gomastha for excess expenses incurred by him over and above the amount of rents collected by him was held to be cognizable in the Small Cause Court, notwithstanding that the nature of the defence might render it necessary to investigate the accounts of the mahal. PROSVNNO CHUNDER ROY v. SHREYATH SHREYANATH. [7 W. R., 422]*

[7 W. R., 422]

36.—*Suit to recover balance of account by tehsildar.—A suit to recover the balance of nikaal papers furnished by defendant in his capacity of tehsildar, there being an allegation in the plaint that the defendant verbally promised to pay part of the sum claimed under the circumstances mentioned therein, was held not to be cognizable by a Court of Small Causes. SRISHTHERNDUR BOSE v. SHAMA CHUND GHOSH. 14 W. R., 53*

[10 W. R., 83]

37.—*Suit for balance due on account of rents.—A suit for a balance due on account of rents collected from the plaintiffs zamindars by the defendants, rather acting as agents of the plaintiffs is a suit in which money is claimed as due on a contract within the meaning of s. 6, Act XI of 1865. Where the amount claimed in such a suit does not exceed Rs. 500, it is cognizable by a Small Cause Court, notwithstanding it may be necessary to go into the accounts of both parties to determine what is due. DXPBARKA NUNDUN SEN v. MUNDNOO MURTY GOOPPA. [T. L. R., 1 Cal., 123: 24 W. R., 478]*

—continued.

SMALL CAUSE COURT, MOFUSSIL.

2. JURISDICTION—continued.

Court Judge have concurrent jurisdiction over him to the amounts respectively cognizable by them. SHAPURJI JEHANGIR v. MORGAN. [4 Bom., A. C., 187]

28.

Dwelling—Act XI of 1865, s. 8.—The defendant, an officer in a regiment stationed at Vellore, was sued for money due for the rent of a house occupied by him at Madras. While absent on leave on medical certificate, he rented the plaintiff's house at Madras, where he was residing at the time of the institution of the suit; but he returned to Vellore previous to the hearing of the suit. The Small Cause Court Judge of Vellore held that the defendant was dwelling at Vellore at the time of the institution of the suit within the meaning of s. 8, Act XI of 1865. Held that there was nothing in point of law to prevent the Judge from affirming his jurisdiction. KISHUN SING v. SURUR [5 Mad., 471]

29.

Defendant residing out of jurisdiction—Act XXIII of 1861, s. 4.—The provisions of s. 4 of Act XXIII of 1861 were applicable to Courts of Small Causes in the mofussil. ANJUNABAI v. SAKHARAJ JAGANNATH. [6 Bom., A. C., 256]

[6 Bom., A. C., 256]

30.—*Defendant residing out of jurisdiction—Act XXIII of 1861, s. 4.—When a cause of action arises within the local jurisdiction of a Small Cause Court, but one of several defendants resided out of such jurisdiction, sanction might be given, under s. 4 of Act XXIII of 1861, by the High Court to the Small Cause Court to try the suit. MATHURDAS JAGTIVANDAS v. NATHA BABA 6 Bom., A. C., 131*

[18 W. R., 312]

31.—*Suit against joint obligors—Act XLII of 1860, s. 21.—An order from the High Court was necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom at the time of filing the plaint was neither resident nor personally working for gain within the limits of its jurisdiction. Such order should be applied for after the reception of the plaint, upon a statement of the circumstances of the particular case. S. 21 of Act XLII of 1860 was to have the same operation as if Act XXIII of 1861 had formed part of Act VIII of 1859 when it became law. SABHAPATI MUDALI v. MOTTUSVAMI MUDALI. [1 Mad., 103]*

32.

Madras Civil Courts Act (III of 1873)—Act XI of 1865, s. 8.—Since the passing of the Madras Civil Courts Act (III of 1873) the general control over all the Civil Courts is vested in the District Judge to whom the application should be made. It is only in cases where the defendant is beyond the local jurisdiction of the District Court, and the Court before whom the suit is instituted has not otherwise jurisdiction under Act XI

SMALL CAUSE COURT, MOUSSIL.

2. JURISDICTION—continued.

38. *Suit against*

guardian and manager of property for rents collected by him—Trustee bound to account—In a

suit to recover from the guardian of a minor and the

manager of

tenement,

rents collected

—Held

simply as an agent to collect plaintiff's rents, but was

bound as a trustee to account for the proceeds of the

property, and that the claim was therefore not cogni-

table in a Small Cause Court. Ray for Mousook-

Das v. Kedar Nanyal Bori

26 W. R., 75

39. JURISDICTION—continued.

40. Act XI. of 1868, s. 3.—De-

pending suit without certificate—A Court of Small

Causes, constituted under Act XI. of 1865, is compe-

tent under

relative of

it has jurisdiction in relation to the subject-matter of

the suit. Khatro Behan v. Nard Nanyal

25 W. R., 369

41. Alternative relief—Act XI

of 1865, s. 6.—In a suit by A, claiming that B might

be ordered to fill up an excavation or to pay him Rs. 50

no ground for the first relief sought. Held the suit

was cognizable by the Court of Small Causes. Narda

Kayan Nanyal v. Nanyal Chandra Nanyal

11 B. L. R., A. C. 91; 10 W. R., 130

42. Arbitration—Civil Procedure

Code, s. 827.—When a matter had been referred to

an arbitrator residing within his jurisdiction,

and the defendant residing within his jurisdiction,

Kan Nanyal v. Nanyal

11 B. L. R., A. C. 43; 10 W. R., 85

43. Jurisdiction—Mussilman. Nanyal Nanyal

Kan v. Nanyal Nanyal

10 Bom., 64

44. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

45. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

46. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

SMALL CAUSE COURT, MOUSSIL.

2. JURISDICTION—continued.

claims cognizable by such Court.

3 N. W., 117

Durgas Singh v. Sima

7 N. W., 329

44. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

45. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

46. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

47. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

48. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

49. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

50. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

51. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

52. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

53. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

54. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

55. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

56. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

57. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

58. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

59. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

60. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

61. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

62. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

63. Jurisdiction—Mussilman. Nanyal Nanyal

10 Bom., 64

—continued.

2. JURISDICTION—continued.

establish his right to personal property and to recover the value of the same is not cognizable by a Small Cause Court. MOODJEE GAZAR v. DINOORMOO GOSSAMEE. 13 W. R., 89.

"This latter case is not to be taken as extending the rule laid down in *Ram Dhu Bissas v. Keshal Bissas*, 1 B. L. R., S. N., 10, in suits by unsuccessful claimants under s. 246, Act VIII of 1859. *PURU v. ODOOR*. 18 W. R., 387.

See *WOOMESH CHUNDER BOSE v. MADDON MONDIN SINGH*. 2 W. R., 44.

and ANONYMOUS. 2 W. R., S. C. C. Ref., 5.

55. *Civil Procedure Code, 1877—Owner to recover moveable property under s. 600.—The plaintiff was owner of moveable property attached in execution of a decree, and, his claim to such property having been rejected under s. 246 of Act VIII of 1859, he brought this suit to recover possession. Held that the suit was cognizable by a Mofussil Court of Small Causes. *QUESTIONS.—Whether the new Civil Procedure Code (Act X of 1877) prevents or allows a suit, like the present, to be brought in a Court of Small Causes. NATHU GANESH v. KATIDAS UYED*. 1 L. R., 2 Bom., 365.*

56. *Suit to establish right to property attached under decree—Jurisdiction.—Civil Procedure Code, 1877, s. 238—Act XI of 1865, s. 12.—A suit brought by a defeated claimant, under s. 238 of Act X of 1877, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court is within the jurisdiction of, and must therefore, under Act XI of 1865, s. 12, be instituted in, a Small Cause Court. GORDHAN PRATA v. KASANDAS BALMEKUNDAS*. 1 L. R., 3 Bom., 179.

57. *Attachment of moveable property—Suit to establish right—Civil Procedure Code, s. 238.—A suit under s. 238 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable property attached in execution of a decree passed by a Civil Court, and for such property, the same being less than Rs500 in value, is not a suit cognizable in a Court of Small Causes. *ILAH BUKSH v. SITA*. 1 L. R., 5 All., 462.*

58. *Claim for personal property and to set aside order disallowing objection to its attachment—Jurisdiction—Act XI of 1885, s. 6.—A suit to recover moveable property attached in execution of a decree and damages for its wrongful attachment, and to set aside the order disallowing an objection to its attachment, is not a suit cognizable in a Court of Small Causes. *MURKAND LAL v. NASTIRUD-DIN*. 1 L. R., 4 All., 416.*

59. *Suit for personal property—Suit to establish right—Civil Procedure Code, s. 238—Act XI of 1865, s. 6.—A person who had claimed moveable property attached in execution of a decree as his own, and whose claim had been investigated and disallowed under ss. 278 to 281 of the*

—continued.

2. JURISDICTION—continued.

48. *Attachment—Attachment of immovable property before judgment.—A Court which cannot attach primarily in execution of its decree cannot attach in anticipation of it. A Small Cause Court therefore cannot grant an attachment before judgment of immovable property. *MAHATHAKMA v. KIRTI SUREKAMA*. 6 Mad., 91.*

49. *Cess—Suit to recover arrears of cess.—A suit brought to recover arrears of a cess is not a suit of the nature cognizable by Small Cause Courts. *KASIM ALI v. SHADRE*. 3 N. W., 21.*

50. *Suit for zamindari dues and cesses.—The plaintiff claimed from the defendants, as joint decree-holders, a fourth share of the proceeds realized by auction-sale through the Court of the Munsif of certain houses, situate on land subject to a village-custom whereby a proprietary due of the above amount was recognized and payable to the zamindar of the said land. The Division Bench of the High Court having referred to the Full Bench the question whether claims for such zamindari dues or cesses were in the nature of suits cognizable by a Court of Small Causes.—Held by the Full Bench that the claim as brought did not fall within any of the classes of suits cognizable by the Courts of Small Causes: after if the due was payable in virtue of a contract. *NAKHU v. BOARD OF REVENUE*.*

51. *Suit to recover road cess—Road Cess Act (Beng. Act X of 1871).—A suit to recover road-cess and public works cess is not a claim for money on a bond or other contract, but is a claim created and made recoverable by a special enactment of the Legislature, and does not fall within the provisions of s. 6 of the Mofussil Small Cause Court Act. *DAVID v. GRIESH CHUNDER GUHA*. 1 L. R., 9 Cal., 183; 11 C. L. R., 305.*

52. *Act XI of 1865—Jurisdiction.—Water-cess.—Payment by landholder—Implied contract by tenant to recover.—If a landholder pays to Government water-cess which his tenant is legally bound to pay, a Small Cause Court, constituted under Act XI of 1865, has jurisdiction to decide a suit brought by the landholder against the tenant to recover the amount so paid by the landholder. *VENKATRAMAYA v. VIRAYA*.*

53. *Claim to property seized in execution—Act XI of 1865, s. 6—Title, question of.—A Small Cause Court had no jurisdiction to entertain a suit by a decree-holder to establish his title to property seized in execution of a judgment-debtor's title to property seized in execution which had subsequently been released to a claimant under s. 246, Act VIII of 1859, and to recover the value of the property from the successful claimant. *RAM DHUN BISWAS v. KERAL BISWAS*.*

54. *[1 B. L. R., S. N., 10: 10 W. R., 141] Suit to establish right to personal property and to recover value of it.—A suit on the part of an unsuccessful claimant to*

SMALL CAUSE COURT, MOUSSIL.

—continued.

2. JURISDICTION—continued.

though the value of the property be such as to fall within the pecuniary limit. *CHIDAMBAI MAYADAS v. JESUNATH DASABENNAI*

[*I. L. R.*, 4 Bom., 603

BALAKRISHNA v. KIRAVATHI

[*I. L. R.*, 4 Bom., 606 note

84.

for personal

partner of firm

from a third

to form a firm

us is the

property, and fell within the ruling in *Chidambai*

Agardas v. Jeshan Kaur Dasabai, [*I. L. R.*, 4

Bom., 503 *PAOT PAKTAR HANIN v. VANALAT*

MURUGAN

[*I. L. R.*, 8 Bom., 259

Case decree passed by the Court of a subordinate

Judge, a claim thereon was preferred by it and

we cited. If then brought a suit in the District

Code enables a party, against whom an order has been

made in execution proceedings, to bring a suit to

establish his rights, whatever they may be; but it may

nothing as to the nature of the suit or the Court in

which it is to be brought. Whether the party is

the Court or the value will lie in a small Cause

plaintiff parties to the suit and requires a

declaration of his right to the property, such a suit

will not lie in the small Cause Court. *SIMMOO*

NARAYAN SINGH v. MURDAN LAL. *NARAYAN SINGH*

v. KANDAS PATTI

[*I. L. R.*, 7 Cal., 608; 9 C. L. R., 8

Suit for sale of

after wrongfully attached and sold in execution of de-

crees. Where plaintiff's sheep had been attached in

—continued.

SMALL CAUSE COURT, MOUSSIL.

2. JURISDICTION—continued.

I. L. R., 4 Bom., 503; *MAIRANNA v. DASABENNAI*

Cholay Lall, 3 N. W., 168, dissenting from *GODA*

HAIR HAN

[*I. L. R.*, 7 A. M., 163

Suit to recover

movable property wrongfully attached—Suit to set

aside order of Sheriff—A suit brought by an owner

to recover movable property of which he has been

plaintiff's husband, is maintainable by a Small Cause

Court. *JAYAKANNAL v. VITHAYALATH*

[*6 Mad.*, 101

Act XI of 1865,

—A suit brought by a decree-holder in execution

of a suit brought by him in his former division

to establish his right to attach and will not

be maintainable by a Small Cause Court.

Personal pro-

83.

PRITHWEE HANUMANTH v. BALAKRISHNA

[*9 Bom.*, A. C., 27

not a suit maintainable by a Court of small Cause

as it is the property of his judgment-debtor in

execution of his judgment-debtor in execution

of a suit brought by a decree-holder in execution

of a suit brought by him in his former division

to establish his right to attach and will not

be maintainable by a Small Cause Court.

Suit to establish

right to personal property seized in execution of

decree—A suit to establish the plaintiff's right to

the plaintiff's personal property, of which

the plaintiff and her husband had been dispossessed by

plaintiff's husband, is maintainable by a Small Cause

Court. *JAYAKANNAL v. VITHAYALATH*

[*6 Mad.*, 101

Act XI of 1865,

—A suit brought by a decree-holder in execution

of a suit brought by him in his former division

to establish his right to attach and will not

be maintainable by a Small Cause Court.

Personal pro-

83.

PRITHWEE HANUMANTH v. BALAKRISHNA

SMALL CAUSE COURT, MOFUSSIL.

2. JURISDICTION—continued.

68. **Suit for property wrongfully seized in execution—Civil Procedure Code (Act XIV of 1882), ss. 278-283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit for attached property under s. 278—Order made under s. 281—Suit by claimant to establish right.**—The first and second defendants obtained a decree in suit No. 1548 of 1897 against *R*, described as the owner of the *Wahalan Mills*, and attached property on the mill premises. Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons, who were also described as owners of the *Wahalan Mills*. In suit No. 1548 of 1897 against *R*, (the present plaintiff), under s. 28 of the Civil Procedure Code, claimed the property. His claim was disallowed, and he was ordered to bring a suit under s. 283. No claim or order was made in the case of the other twelve suits. *R* now sued in pursuance of the above order to recover his property, and he included as defendants not merely those defendants (Nos. 1 and 2) who had been plaintiffs in suit No. 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. It was objected that no suit would lie against the latter, as in their suits no claim had been made to the goods which they had attached and no order made under s. 281, Civil Procedure Code. *Held* that the Court of Small Causes had jurisdiction to try the suit. In substance the suit was a suit for goods, though, as a matter of form, the decree might contain a declaration. A suit for the release of goods wrongfully seized is not a declaratory suit under s. 42 of the Specific Relief Act (I of 1877), that although the value of the property claimed by the plaintiff was admittedly over Rs. 2,000, the Court of Small Causes had jurisdiction. The plaintiff was entitled to abandon part of his claim. **SAROSH KAMA** . **I. L. R., 23 Bom., 266**

69. **Compensation for acquisition of land—Provincial Small Cause Courts Act (IX of 1889), sch. II, arts. II and 14—Claim for compensation awarded under Land Acquisition Act—Interpleader suit—Civil Procedure Code (1882), ss. 470 and 622—Jurisdiction of Munsif—Superintendence of High Court.**—Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at Rs. 468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif.

70. **Contract—Suit for breach of contract on failure to register.**—A suit to recover money paid as the price of land in consequence of vendor's failure to complete the bargain by registration of the deed of sale is maintainable in a Court of Small Causes, being substantially a suit for breach of contract for sale of land. **CHANO KHAM v. DOORAGAMONE** . **9 W. R., 498**

71. **Suit for value of produce not paid under contract.**—Where a cultivator is a mere servant of the landlord, a suit for damages will lie against him in the Small Cause Court. If the cultivator is a tenant to whom the landlord has sub-let the land, a suit for non-f fulfilment of his contract by the tenant will not lie in the Small Cause Court, but in the Revenue Courts under Act X of 1859. **SEREMATH DUTT v. DWAKY DEVI** . **2 W. R., s. C. C. Ref., 2**

72. **Suit for payment in kind.**—A suit to recover a quantity of rice for its value Rs. 300 in return for some paddy which had been taken by the defendant under contract was held to be cognizable by the Small Cause Court within the meaning of Act XXIII of 1861, s. 27. **DOR KUMAR v. SOORJO DUTT SOEMAH** . **22 W. R., 269**

73. **Liability for family debt.**—The manager of a Hindu family, having borrowed money for a proper and necessary purpose, his son's marriage, gave a bond to secure the debt. *Held* that a suit against the father and son to recover the money lent was cognizable by a Court of Small Causes under Act XI of 1865. **PUNA KARPAPPA PILLAI v. VINAYAKA PILLAI** . **I. L. R., 6 Mad., 377**

74. **Suit against sons in undivided family to enforce debt incurred by father.**—A suit against the undivided sons of a deceased Hindu father to enforce payment of a debt incurred by the latter is within the jurisdiction of a Small Cause Court, and that jurisdiction is not ousted by a plea that the debt was contracted for immoral purposes. **GOPAL KRISHNA SASSTRI v. KAVAYANAGAR** . **I. L. R., 4 Mad., 236**

75. **Civil Procedure Code, s. 556—Munsif's Small Cause Courts Act (XI of 1865), s. 6—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt of living father.**—In a suit upon a bond executed by a Hindu, the plaintiff made the debtor

68. **Compensation for acquisition of land—Provincial Small Cause Courts Act (IX of 1889), sch. II, arts. II and 14—Claim for compensation awarded under Land Acquisition Act—Interpleader suit—Civil Procedure Code (1882), ss. 470 and 622—Jurisdiction of Munsif—Superintendence of High Court.**—Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at Rs. 468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif.

80. Suit against co-contractor—Suit for money due on a contract—Plaintiff, defendant, and another party had jointly

contingency of the Government incurring, expense in case of failure in the part of the contractors. The contract was completed by one of the contractors,

16 W. R., 613

82. Last PATTAGE GAWAL & HAY KATEE DUKATY [18 W. R., 104

Share in cash item—Claim on implied contract—Suit to recover

10 Bom., 21
See BUDHAWAT JYAT & BUDHAWAT GOVIND [11 Bom., 194

83. Suit to recover share of annual allowance—A suit to recover a share of annual allowance

6—Suit to recover share of annual allowance—A suit to recover a share of annual allowance

79. Against the sons was had KATASING & SUNDIA [11 R., 13 Mad., 139

78. Suit for share of

77. I L. R., 3 All., 805

76. Suit for share of

75. Suit for share of

SMALL CAUSE COURT, MOUSSIL

—continued.

2. JURISDICTION—continued.

of such share for the period between January 1874 and February 1878.—*Held* that the suit was one for damages under s. 70 of Act IX of 1872 within the meaning of s. 6 of Act XI of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie. *NATH PRASAD v. BAIY NATH*. I. L. R., 3 All., 66

89. *Prasad v. Baiy Nath*. I. L. R., 3 All., 66. *Revenue by a person for another—Suit for reimbursement.*—A suit by the proprietor of one village who has been compelled to pay the revenue payable by the proprietor of another village for reimbursement is, where the amount of such payment does not exceed Rs. 500, a suit of the nature cognizable in a Court of Small Causes. *NATH PRASAD v. BAIY NATH*, I. L. R., 3 All., 66, followed. *QUTUB HUSAIN v. ABUL HASAN*. I. L. R., 4 All., 134

90. *Relations resembling contract—Act IX of 1872 (Contract Act), ss. 69, 70—Payment of land revenue—Act XI of 1865, s. 6.*—The plaintiff purchased land belonging to the defendant at an execution-sale, at which it was notified that arrears of revenue were due in respect of the land. The plaintiff paid such arrears, and also the arrears which had accrued in the period between the sale and the date the plaintiff obtained possession. They then sued the defendant in the Munsif's Court to recover the amount they had paid. *Held* that, with reference to the principle laid down in *NATH PRASAD v. BAIY NATH*, I. L. R., 3 All., 66, the suit should have been instituted in the Court of Small Causes. IN THE MATTER OF THE ESTATE OF ABUL MAZHAH. I. L. R., 4 All., 152

91. *Contract of Act of (IX of 1872), ss. 69, 70—Small Cause Court Act (XI of 1865), s. 6—Pati rent—Implied contract.*—The plaintiff, a purchaser in execution of a pati right, brought a suit in a Munsif's Court to recover from the defendant, a former holder of the pati right, a sum of money which she had been compelled to pay to the zamindar for rent which had accrued due prior to the date of her purchase. The Munsif gave the plaintiff a decree, which, however, on appeal to the District Judge, assuming the suit to be independent of any express promise, it was one cognizable by a Court of Small Causes, and no appeal would therefore lie. *Manbux Chittagoe v. Mohdhoosoodun Paul Chowdhury*, B. L. R., Sup. Vol., 675: 7 W. R., 377, distinguished. Cases falling within the provisions of ss. 69 and 70 of the Contract Act are cognizable by a Court of Small Causes under s. 6 of Act XI of 1865. *NATH PRASAD v. BAIY NATH*, I. L. R., 3 All., 66, approved. *KRISHNO KAMINI CHOWDHAN v. GOPI MOHUN GHOSH HAZRA*. I. L. R., 15 Cal., 652

92. *Provincial Small Cause Courts Act, sch. II, art. 41—Civil Procedure Code, s. 586—Suit for contribution—Joint property—Lands of which part belonged to the plaintiffs and*

in the moussil. *KESHAVNATH v. BHAGIRATHAI*

85. *Act XI of 1865, s. 6—Suit for money borrowed by servant on understanding it would be repaid by master.*—A servant borrowed on account of his master a sum of money which was partly spent in satisfaction of his master's debt and partly taken by the latter and spent for his own private purposes. No re-payment having been made by the master, the lenders took out a decree against the servant, who then sued the master to recover the money. *Held* that there was a legal presumption that the money was advanced on account of the defendant on the understanding that it would be repaid; and that the action was one for debt within the meaning of s. 6 of the Small Cause Courts Act XI of 1865. *RASHI MOHAR DEBIA v. RAJARAM SIRCAR*. I. L. R., 86

86. *Act XI of 1865, s. 6—Suit for money on implied contract.*—Plaintiff took a lease from defendant, and a bakajal setting forth a certain sum (Rs. 473-10) as due from the tenants on account of rent, and on the faith of the bakajal paid that sum to the defendant. He then sued the tenants for the same, and was met with pleas either of payment to the defendant or of payments by assignment for the defendant's debts. He then sued defendant for a refund. *Held* that the claim was for money due under an implied contract for the repayment of a sum under Rs. 500, and cognizable by a Small Cause Court under Act XI of 1865, s. 6, cl. 4. *WZABER MOTILAL SIRCAR v. NITUMBER DEBIA*. I. L. R., 87, 484

87. *Implied contract—Contract to indemnify against claim of superior landlord.*—If A buys a tenure at a public auction in the name of B, he impliedly contracts to indemnify B against the claims of the superior landlord, and a suit by B against A to recover the amount of a decree obtained against him by the superior landlord will lie in a Small Cause Court. *KADARASSUR MOOKERJEE v. GOOROO CHURN MOOKERJEE*. I. L. R., 388

88. *Second appeal—Act XI of 1865, s. 6.*—On the death of K, a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874 N, who was not one of her heirs and who was not a shareholder in such village, was recorded in the revenue register as landlord in respect of her share, and was so recorded until February 1878, when his name was expunged and the name of B, who was one of the heirs, was recorded as proprietor. In a suit by N against B to recover Rs. 70, being the amount he had paid on account of revenue in respect

of the family from another descendant who had received the whole stipend.—*Held* that this was not a suit for money due on a contract or "for personal property or otherwise" within the meaning of s. 6 of Act XI of 1865, cognizable by a Court of Small Causes in the moussil. *KESHAVNATH v. BHAGIRATHAI* [3 Bom., A. C., 75]

SMALL CAUSE COURT, MORVSSIL.

—continued.

[I. L. H., 13 Mad., 424

93. Contribution—Suit for contribution—A Small Cause Court has no jurisdiction to try a suit for contribution. *TAMIZHAR MIYAN v. GAYATHI KUNIA*. 7 B. L. R., 40 Ap., 40

678, 7 W. N., 377. *UNATTO SIKON v. HAKOO MANTOX*. I. L. H., 23 Cal., 189

92. Suit for contribution where there is no contract.—A suit for contribution where there is no contract, express or implied, cannot be entertained by a Small Cause Court. *SEETI HOY v. LONKAM HOY*

[B. L. H., Sup., Vol., 687; 7 W. N., 384

1784 *MOYER DOSEK v. BAMA SOODUREK DOSEK*. 26 W. N., 73

90. Suit against co-defendant for money recovered on joint decree—A suit against a co-defendant for a sum of money recovered by the plaintiff upon a decree which was joint property may be brought in a Small Cause Court. *HEMO MOYER HOY v. KUNATTO MOYER DOSEK*

97. Suit for contribution under joint decree—Act XI of 1865, s. 6—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in s. 6, Act XI of 1865, considered. *GOVINDA MOYERIA THEVAR v. HAYE*

[6 Mad., 200

98. Decree against

99. Suit for contribution under joint decree—Act XI of 1865, s. 6—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in s. 6, Act XI of 1865, considered. *GOVINDA MOYERIA THEVAR v. HAYE*

100. Suit for contribution under joint decree—Act XI of 1865, s. 6—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in s. 6, Act XI of 1865, considered. *GOVINDA MOYERIA THEVAR v. HAYE*

2. JURISDICTION—continued.

I. L. H., 3 All., 66, distinguished. *POTTER AIR v. GUNAKATH HOY*

[I. L. H., 8 Cal., 113; 10 C. L. R., 20

100. Suit to recover a share of money recovered by co-plaintiff under a decree—Act XI of 1865 (*Minor's* Small Cause Courts Act), s. 6—*Held* that a suit to recover a share of money which had been recovered by a co-plaintiff under a decree was a claim for money due on a contract within the meaning of s. 6 of the *Minor's* Small Cause Courts Act (VI of 1865), and was therefore a suit of the nature cognizable by a Court of Small Causes in which, under a 666 of the Civil Procedure Code, no record appeal could be taken. *DAS v. LACHMAN SINGH*. I. L. H., 7 All., 689

101. Minor's law—

102. Agency—*Hemo Moheria Thevar v. Haye*—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in s. 6, Act XI of 1865, considered. *GOVINDA MOYERIA THEVAR v. HAYE*

103. Agency—*Hemo Moheria Thevar v. Haye*—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in s. 6, Act XI of 1865, considered. *GOVINDA MOYERIA THEVAR v. HAYE*

104. Agency—*Hemo Moheria Thevar v. Haye*—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution. The meaning of the word "contract" in s. 6, Act XI of 1865, considered. *GOVINDA MOYERIA THEVAR v. HAYE*

SMALL CAUSE COURT, MOUSSIL.

—continued.

2. JURISDICTION—continued.

of such share for the period between January 1874 and February 1878,—*Held* that the suit was one for damages under s. 70 of Act IX of 1872 within the meaning of s. 6 of Act XI of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie. *NATH PRASAD v. BAIY NATH*. I. L. R., 3 All., 66

89.

Suit for reimbursement of revenue by a person for another—A suit by the proprietor of one village who has been compelled to pay the revenue payable by the proprietor of another village for reimbursement is, where the amount of such payment does not exceed Rs500, a suit of the nature cognizable in a Mofussil Court of Small Causes. *NATH PRASAD v. BAIY NATH*. I. L. R., 3 All., 66, followed. *ABDUL HASAN I. L. R., 4 All., 184*

90.

Relations resembling contract—Act IX of 1872 (Contract Act), ss. 69, 70—*Payment of land revenue*—Act XI of 1865, s. 6.—The plaintiffs purchased land belonging to the defendant at an execution-sale, at which it was notified that arrears of revenue were due in respect of the land. The plaintiffs paid such arrears, and also the arrears which had accrued in the period between the sale and the date the plaintiffs obtained possession. They then sued the defendant in the Mofussil Court to recover the amount they had paid. *Held* that, with reference to the principle laid down in *NATH PRASAD v. BAIY NATH*, I. L. R., 3 All., 66, the suit should have been instituted in the Court of Small Causes. IN THE MATTER OF THE ESTATE OF *ABDUL MAZAH* I. L. R., 4 All., 152

91.

Contract of Act IX of 1872, ss. 69, 70—*Small Cause Court Act (XI of 1865)*, s. 6—*Part rent*—*Implied contract*.—The plaintiff, a purchaser in execution of a judgment, brought a suit in a Mofussil Court to recover from the defendant, a former holder of the patta right, a sum of money which she had been compelled to pay to the zamindar for rent which had accrued due prior to the date of her purchase. The Munsif gave the plaintiff a decree, which, however, on appeal to the District Judge, was reversed. On appeal to the High Court,—*Held* that, assuming the suit to be independent of any express promise, it was one cognizable by a Court of Small Causes, and no appeal would therefore lie. *Rambhadr Chittango v. Madhoo Choudhary*. B. L. R., Sup. Vol., 675 : 7 W. R., 377, distinguished. Cases falling within the provisions of ss. 69 and 70 of the Contract Act are cognizable by a Court of Small Causes under s. 6 of Act XI of 1865. *NATH PRASAD v. BAIY NATH*, I. L. R., 3 All., 66, approved. *KRISHNA GHOSH HAZRA DUKHAN v. GORI MONDUN GHOSH HAZRA* I. L. R., 15 Cal., 652

SMALL CAUSE COURT, MOUSSIL.

—continued.

2. JURISDICTION—continued.

of the family from another descendant who had received the whole spend,—*Held* that this was not a suit for money due on a contract or "for personal property or otherwise" within the meaning of s. 6 of Act XI of 1865, cognizable by a Court of Small Causes in the mofussil. *KESHAVBHAI v. BHAGERTHBAI* [3 Bom., A. C., 75

85.

Act XI of 1865, s. 6—*Suit for money borrowed by servant on under-standing it would be repaid by master*.—A servant borrowed on account of his master a sum of money which was partly spent in satisfaction of his master's debt and partly taken by the latter and spent for his own private purposes. No repayment having been made by the master, the lenders took out a decree against the servant, who then sued the master to recover the money. *Held* that there was a legal presumption that the money was advanced on account of the defendant on the understanding that it would be repaid; and that the action was one for debt within the meaning of s. 6 of the Small Cause Courts Act XI of 1865. *RASH MONEE DEBIA v. RAJARAM SINGH* [15 W. R., 86

86.

Suit for money on implied contract.—*Plaintiff took a lease from defendant, and a bakshi settling forth a certain sum (Rs478-10) as due from the tenants on account of rent, and on the faith of the tenants for the same, and was met with pleas either of payment to the defendant or of payments by assignment for the defendant's debts. He then sued the defendant for a refund. Held* that the claim was for money due under an implied contract for the repayment of a sum under Rs500, and cognizable by a Small Cause Court under Act XI of 1865, s. 6, cl. 4. *WUZZER MUTTIKOR SINGH v. NITUMBAR DEBIA* [18 W. R., 484

87.

Implied contract—*Contract to indemnify against claim of superior landlord*.—If A buys a tenure at a public auction in the name of B, he impliedly contracts to indemnify B against the claims of the superior landlord, and a suit by B against A to recover the amount of a decree obtained against him by the superior landlord will lie in a Small Cause Court. *KADARASSUR MOOKERJEE v. GOOROO CHURN MOOKERJEE* [2 C. L. R., 388

88.

Second appeal—*Contract Act*, s. 70—*Act XI of 1865*, s. 6.—On the death of K, a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874 N, who was not one of her heirs and who was not a shareholder in such village, was recorded in the revenue register as landlord in respect of her share, and was so recorded until February 1878, when his name was expunged and the name of B, who was one of the heirs, was recorded as proprietor. A suit by N against B to recover Rs70, being the amount he had paid on account of revenue in respect

92. *Provincial Small Cause Courts Act, sch. II, art. 41*—*Civil Procedure Code*, s. 586—*Suit for contribution*—*Joint property*—*Suit relating to contract*—*Contract Act*, s. 69.—Lands of which part belonged to the plaintiffs and

SMALL CAUSE COURT, MOFUSSIL

—continued.

2. JURISDICTION—continued.

108.

Suit against co-sharer for contribution in respect of Government revenue.—A suit by a co-sharer for contribution in respect of Government revenue paid by him in excess of his quota is not cognizable by a Small Cause Court, as the extent of the share in respect of which contribution is sought cannot be determined without deciding a question of title. **KARIE NATH ROY v. NILA RAM PURBANIOK . 7 W. R., 32**

104.

Suit for contribution in respect of money paid as revenue to save estate from sale.—A claim for money below Rs 500 paid as revenue by one partner in an estate on account of another in order to save the estate from sale and is therefore cognizable by a Small Cause Court. **RAM MONKEY DOSSIA v. PEARY MONOH MOZOOMDAR [6 W. R., 325**

105.

Suit to recover arrears of revenue compulsorily paid.—A suit to recover arrears of revenue which the plaintiff was compelled to pay by the revenue authorities, but which the defendant was liable to pay, is cognizable by a Court of Small Causes. **PARASURAMA CHUDVA-BRAITAN v. KRISHNAIAHAN . 5 Mad., 462**

106.

Suit by co-sharer for contribution to Government revenue.—A suit by a co-sharer for contribution in respect of arrears of revenue paid by him in excess of his quota to save the entire estate from sale is not cognizable by a Small Cause Court. **BRAMHATH CHOWDHY 7 W. R., 17**

107.

Suit for contribution by co-sharer who has paid whole Government revenue.—Where one of several co-shares in an estate paying revenue to Government has paid the revenue due upon the whole estate to prevent it from being sold, a Small Cause Court has no jurisdiction to entertain a suit brought by him against the other co-shares for contribution. **RAMPOO CHITTANGBO v. MODHOOSOODUN NATH CHOWDHRY [B. L. R., Sup. Vol., 675**

2 Ind. Jur., N. S., 155; 7 W. R., 377

MODHOOSOODUN MOZOOMDAR v. BINDORASHINX DOSSIE . 6 W. R., Civ. Ref., 15

108.

Suit for contribution—Co-sharers.—No suit for contribution between co-partners in revenue-paying estate, or for contribution between co-partners in a jumma, will lie in the Small Cause Court. **NORIN KRISHNA CHAKRAVARTI v. BAK KUTAR CHAKRAVARTI . BUNNI-KRABARTI v. MAHAMMAD HOSAIN [I. L. R., 7 Cal., 605; 9 C. L. R., 90**

109.

Suit for share of revenue paid by mortgagee.—A suit by a mortgagee to compel a mortgagor to repay him the amount of Government assessment, which he has been compelled to pay when in occupation of the mortgaged property, is an obligation in equity to repay,

—continued.

2. JURISDICTION—continued.

110.

Suit to recover money paid to co-sharers as excess of rent.—A suit to recover money alleged to have been paid in excess of plaintiff's share of rent on account of his co-tenant was held to be a suit for contribution, and as such not cognizable by the Small Cause Court. **CHUCKERBUTTY v. BHAKTUBHATH PATTER [5 W. R., 52**

111.

Suit to recover by Revenue Court.—Suit to recover money paid to plaintiff for arrears of rent.—The plaintiff sued from being sold at the instance of the defendant for non-payment of arrears of rent under Madras Act VIII of 1865, the plaintiff's allegation being that no rent was due to the defendant. **Held** that the Small Cause Court had no jurisdiction, because the suit was cognizable before a revenue officer. **SHATUN-KARA SUBBIAH v. VELLATHAN CHETTI 5 Mad., 179**

112.

Suit by surety against principal for recovery of money paid on his account.—Suit for contribution.—A suit by a surety for recovery of a sum not exceeding Rs 500, which he had to pay on account of his principal, is cognizable by a Small Cause Court. A suit for contribution is not cognizable by a Small Cause Court, unless there is a contract, express or implied, between the parties. **SHAROO MAJEE v. NOORAI MOLLAH, JONKER v. NABOO. BHARUT CHANDER DEUT v. DEVGAR GORE [B. L. R., Sup. Vol., 691; 7 W. R., 386**

113.

Suit by one surety against another for contribution.—Act XI of 1865, s. 6.—A suit by one surety against another for contribution, where the sureties are bound by the same instrument, is a suit on an implied contract, and therefore within the jurisdiction of a Court of Small Causes. **Govinda Manaya Triyan v. Bapu, 5 Mad., 200, and Ratan Shankar v. Gopalshankar, 10 Bom., 21, followed. HARI THIRAK v. ABASHANKAR [I. L. R., 4 Bom., 321**

114.

Provisional Small Cause Court Act (IX of 1887), sch. II, arts. 2, 41, 42, and 44.—Suit for costs paid by one of two persons jointly liable.—N C granted a lease of three plots of land to B S. The heirs of the former lessee brought a suit against N C and B S amounting to Rs 50 and annas 5, were recovered from B S alone. Thereupon B S brought this suit against N C in the Court of Small Causes at Puna for the recovery of that amount. **Held** that the suit was one which did not come under art. 2, 41, 42, or 44 of sch. II, Act IX of 1887, and was cognizable by the Small Cause Court. **BISVA NATH SHAN v. NABA KUTAR CHOWDHARY [I. L. R., 15 Cal., 713**

SMALL CAUSE COURT, MOFUSSIL

—continued.

2. JURISDICTION—continued.

and is not cognizable by a Court of Small Causes. **VITHOBA BIN KESHAVSHEK v. SHARAJARAY [5 Bom., A. C., 122**

SMALL CAUSE COURT, MOFESSIL.

2 JURISDICTION—continued

is not of a nature triable by a Small Cause Court

BRUNNEN SAH v. NABASAH GORUKH. [T. L. R., 3 Mad., 9]

but for inam

due for proprietary dues—Suits for proprietary

large lays claim, are not cognizable by a Court of

small Causes. They are not paid as rent, nor are

they claimed under any contract. SUBHAKSHI

CHETTI v. PRINCE OF ANCOOT. [T. L. R., 2 Mad., 146]

192.

Suit for share

of joint collections—A suit for a share of the

collections made from "jamaas" in return for

spiritual instruction is not of the nature cognizable

by a Court of Small Causes under Act XI of 1921.

CHOOVER LATE v. GOVERNOR GENERAL. 1 Aggr., 84

193.

Damages—Act XI of 1921.

A suit for damages for personal injury—S.

6 of Act XI of 1921 suits to recover damages

for personal injury cannot be brought in a Small

Cause Court unless actual pecuniary damage

has resulted from the injury. That such a damage

from the jurisdiction of the Small Cause Court

and the like, where no actual pecuniary damage

has resulted from the injury. That such a damage

from the jurisdiction of the Small Cause Court

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has resulted from the injury. That such a damage

2. JURISDICTION—continued.

Small Cause Courts Act (IX of 1887), *sch. II, cl. 31*—Suit for profits of land—A suit to recover with interest from the date of suit Rs500, the value of crops alleged to have been illegally carried away by the defendant, while the plaintiff was in possession is not a suit for the profits of land within cl. 31 of *sch. II* of Act IX of 1887; such a suit is not excepted from the jurisdiction of the Small Cause Court under that Act. ANNAMALAI v. SUBRAMANYAN [I. L. R., 15 Mad., 298]

134. *Suit to recover value of fishing nets.*—The plaintiffs sued the defendants in the Small Cause Court to recover the value of fishing nets, which the defendants had taken wrongful possession, and damages for the loss sustained by the plaintiffs, in that they were unable to carry on their business as fishermen by reason of the detention of their nets by the defendants. *Held* that the Small Cause Court had jurisdiction to entertain the suit. *MADV. 8 Mad., 34.*

...for legal attachment—Civil Procedure Code, ss. 81 and 88.—Certain movable properties, such as, fishing nets, etc., having been attached under Act of 1859, s. 81, the suit was eventually dismissed and costs awarded to the defendants, who claimed the plaintiff to recover damages sustained.

136. Provincial Small
Cause Courts Act (IX of 1887), s. 35—Suit for com-
pensation for illegal attachment—Suit to recover

by an assault committed on him by the defendants, and H50 as the costs of a criminal prosecution which injury to his reputation and feelings. *Held* that, as much as part of the claim related to alleged actual pecuniary damage resulting from an alleged personal injury, the whole suit was, with reference to s. 6, prov. (3), of the *Mofussil Small Cause Court Act* (XI of 1865), of a nature cognizable by a Court of Small Causes, and that, under s. 186 of the Civil Procedure Code, no second appeal in such suit would lie. *Gunga Narain Mohyow v. Gaddah Chowdhury*, 13 W. R., 484, referred to. *Jiva Ram Singh v. Bhotla*.

DEBI SINGH & HANUMAN UPADHYA
[T. L. R., 3 All., 747

130. Suit for value of produce carried off by defendant cultivating plaintiff's land without consent.—A suit to recover the value of produce carried off without plaintiff's consent from his land, which had been forcibly retained in the cultivation of defendant No. 1, assisted by defendant No. 2, was held to be a suit not for rent, but for damages. KAROO KANAR v. NAVBOO SINGH. 24 W. R., 380.

181. Small Cause Courts Act (IX of 1887)—Suit for damages for the forcible cutting and carrying away of grass.—Act IX of 1887 does not exclude from the jurisdiction of the Small Cause Court a

money paid in excess—The plaintiff sued to recover from his landlord a sum which the defendant had

due to him

137. *Suit for damages*—In a suit for damages for breaking well—

where defendant's pipe was found side purchase for value from plaintiff's predecessor, and plaintiff repudiated that the sale was invalid, as one made by a Hindu

138. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

139. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

140. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

141. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

142. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

143. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

144. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

145. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

146. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

147. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

148. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

149. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

150. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

151. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

152. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

153. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

154. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

155. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

156. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

157. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

158. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

money paid for defendant—Act XI of 1865, s. 6—

A suit to recover money which plaintiff has paid for defendant in the nature of a suit for damages, as described in s. 6 of the Small Cause Court Act.

137. *Suit for damages*—In a suit for damages for breaking well—

where defendant's pipe was found side purchase for value from plaintiff's predecessor, and plaintiff repudiated that the sale was invalid, as one made by a Hindu

138. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

139. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

140. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

141. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

142. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

143. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

144. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

145. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

146. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

147. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

148. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

149. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

150. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

151. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

152. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

153. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

154. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

155. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

156. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

157. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

158. *Suit for damages*—Provincial Small Cause Court Act (IX of 1897), sec. 11, cl. 35

SMALL CAUSE COURT, MOFUSSIL.

—continued.

2. JURISDICTION—continued.

under s. 11, Bengal Act VIII of 1859. BROJONATH DEY v. SHUMBOO CHUNDER CHATTERJEE

[18 W. R., 25]

152. —*Suit for overpayment by mistake—Contract Act, s. 72.*—A suit under s. 72 of the Contract Act to recover from a creditor the amount of an overpayment made to him by mistake is a suit for damages within the meaning of Act XI of 1865, s. 6, and is accordingly cognizable by a Moofussil Court of Small Causes. BADRUVNASSA v. ALDHANAD JAY

[I. L. R., 2 A.H., 671]

153. —*Declaratory decree—Suit to determine co-partener's rights in moveable property.*—A Small Cause Court has no power to entertain a suit for a declaratory decree. There is nothing to prevent a Small Cause Court from determining whether a person who has been made a co-plaintiff and claims as a co-partener of the original plaintiff has any right to the property sued for. The decree in such a case, if given in favour of the plaintiffs, must order that the parties do recover possession of the property sued for in such shares as the Judge may consider them to be entitled. A declaratory decree of the relative rights of the parties cannot be made. AKBAR ALI v. JAZZUBDIN. I. L. R., 8 Cal., 399.

154. —*Suit for declaration of right to bring property to sale as liable to attachment.*—A suit in which the plaintiff sues for a declaration of his right to bring certain property to sale as the property of his judgment-debtor cannot be entertained by a Small Cause Court. RAMESHWAR KUTWAN v. BEHARASE SETH

[3 N. W., 208; Agra, F. B., Ed., 1874, 254]

155. —*Suit for declaration of right and for consequential relief.*—A suit in which the plaintiff prays the Court to consider and declare his right as heir, and for consequential relief, is not within the cognizance of a Small Cause Court. KOTA AHERR v. SAIYNA AHMUD

[3 N. W., 105]

156. —*Act XI of 1865, s. 6—Declaration that bond is satisfied—Claim for money on bond.*—A claim for money on a bond as specified in Act XI of 1865, s. 6, does not include a case for a declaration that the bond has been satisfied and is inoperative. A suit of that description, if maintainable, must be brought in the regular Court. AGRA MUTLICK MUNDUL v. DEBMAH CHATTERJEE

[24 W. R., 190]

157. —*Suit for declaration of right to moveable property wrongfully taken.*—Where a suit is brought for property wrongfully taken by the defendant praying for restoration of such property either to the plaintiff directly or to some other person wholly or partly as agent for the plaintiff, it is a "suit for property" within the meaning of the Small Cause Court Act (XI of 1865), and if the property is moveable and of less than

SMALL CAUSE COURT, MOFUSSIL.

—continued.

2. JURISDICTION—continued.

landed estate which had been charged with the payment thereof under an instrument to which the defendants had not been parties was held to be a personal action for damages within the meaning of Act XI of 1865, s. 6. BIRGOBUTY CHURN RAYAXE v. SHAKODA PRASAD SOOKRYA

[22 W. R., 298]

147. —*Suit to recover as damages profits from service lands—Mad. Reg. VI of 1831, s. 3.*—A Small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from service lands by reason of s. 3 of Reg. VI of 1831. TOPEYA PILLAY v. PRADDOO PILLAY

148. —*Suit by representative for share of debt due to deceased—Withdrawal of money on deposit by other representatives—Wrongful act.*—The legal representatives having allotted the estate of the deceased in certain shares among themselves, a sum of money less than Rs. 50, the entire amount of a debt due to the deceased, was deposited with a banker by the debtor, and was withdrawn by certain of the legal representatives. The others thereupon sued in the ordinary Civil Court for their proportionate share. Held that the suit was a suit for damages caused by the wrongful act of the defendants in withdrawing the whole amount, and was therefore cognizable by a Small Cause Court. KUMARUNNASSA v. SUBAN

[10 C. L. R., 81]

149. —*Suit for damages for fraudulent concealment and misrepresentation.*—A suit to recover Rs. 300 paid by plaintiff to defendant under a fraudulent concealment of the fact that defendant was engaged as bookkeeper for another party who had brought a suit against plaintiff, and upon a fraudulent misrepresentation by defendant that he was conducting plaintiff's case when in fact he was acting for the opposite party, was held to be substantially a suit to recover damages for the injury sustained by plaintiff by reason of the fraudulent concealment and misrepresentation, and to be cognizable by a Small Cause Court. PATYA BROW v. MOOSA

[18 W. R., 128]

150. —*Suit for damages for withholding receipt for rent.*—A suit for damages for withholding a receipt for rent is not cognizable by a Court of Small Causes, and therefore was held not to come under the purview of Act XXIII of 1861, s. 27. SHOYLENDRO GERR SUNNASSA v. PABOO DOSS BUSANRA

[23 W. R., 304]

151. —*Suit for recovery of money paid to, but misapplied by, a ward.*—A suit for the recovery of money alleged to have been paid by the plaintiff to an ignorant on account of arrears of rent, when the same has not been applied to the purpose for which it was given, or when a receipt for it is withheld from the plaintiff, is not cognizable by a Small Cause Court, but by a Munst

SMALL CAUSE COURT, MOUSSIL.

—continued.

JURISDICTION—continued.

CHANDER MOOKJEE v. MOHAMMAD ALI AGA
[17 W. R., 216]
recovered the amount of the second instalment.

DEB v. KAMRAN BIVA
[10 W. R., 352]
184. — Dead—Suit for reformation of a deed—A Small Cause Court has no jurisdiction to entertain a suit for the reformation of a deed.

GULSHAN MOHAMMAD v. DAYANATH GOVINDAN
[10 Bom., 61]
185. —

law of a deed of gift or a deed of sale (Gujarat)
CHANDER LAL v. GOKUL SINGH [17 W. R., 88]
[W. R., 197; B. L. R., Sup. Vol., 34]
and HANNA KESAB LAL v. KOOYO BENAAR
MATH, 88-1 May, 238

186. — Dower—Suit for dower under
Kishanlal v. A suit for the marriage or ex-
change of dower due to plaintiff under a kabina-
nama is cognizable by a Small Cause Court, under
s. 6, Act XI of 1865, notwithstanding that questions
of very considerable difficulty may be raised in

[17 W. R., 612]
187. — Suit for dower—Act XI of 1865, s. 6—A suit for dower
due to plaintiff, payable to the wife by the
husband upon her divorce, or upon the husband's
death by his heirs out of his estate is cognizable by
a Small Cause Court. HANNA KESAB LAL v.
MATH, 18 W. R., 304

188. — Suit for pro-
perty conveyed in form of dower—Held that a suit
for H100 would not lie in the Small Cause Court upon
a deed by which the defendant conveyed to the
plaintiff, in lieu of the amount (H100) due to her as a
dower, a half share in all his property, movable and
immovable, and under which deed, therefore, the
plaintiff was entitled to a moiety of all such property,
but could not sue for the sum originally stipulated
for. NIKHIL DEB v. MISS HIRAN

[18 W. R., Civ. App., 12]

SMALL CAUSE COURT, MOUSSIL.

—continued.

JURISDICTION—continued.

H100 in value the suit is then a small cause. Ac-
cordingly where the plaintiff, who was co-member
with the defendant of a division of a caste, and as
such tenants in common with them of certain cooking
vessels of less than H100 in value, were excluded
by the defendant from possession on and common use of
the vessels and sought for a declaration that the
plaintiff and the defendant were equally entitled to
the use of the said vessels and for restoration of the

189. — null, and the plaint directed to be returned for
presentation in the proper Court. KAMRAN BIVA
v. KAMRAN NABH [I. L. R., 9 Bom., 259]

188. — A suit for a
determination of right by a person against whom an
order has been passed under a 250 of the Civil
Procedure Code, 1871, will not lie in the Small Cause
Court. 1st Bench, I

[I. L. R., 7 Cal., 608; 9 C. L. R., 8]
189. — Decree—Suits to recover cer-
tain decrees, and claim to execute them—in addition
to a claim to recover certain decrees amounting
together in value to less than H100, the plaintiff
claimed a decree authorizing them to put the same
into execution. The suit was not a suit of the nature
recognizable by a Court of Small Causes. HANNA
KESAB LAL v. KOOYO BENAAR MATH, 17 W. R., 28

190. — Suit on decree
of Civil Court—A suit cannot be maintained in a
Small Cause Court in the enforcement of a decree of a
Civil Court. HANNA KESAB LAL v. KOOYO BENAAR MATH, 17 W. R., 28

191. — Suit for balance
due on decree of Small Cause Court—A suit cannot
be maintained in a Small Cause Court in the enforcement
of a decree of a Small Cause Court. HANNA KESAB LAL v. KOOYO BENAAR MATH, 17 W. R., 28

192. — Suit for instal-
ment of decree under Act X with application for
enforcement of decree in default—Where a defendant
agreed to pay the amount of a decree under Act X
by two instalments, and the remedy provided for the
enforcement of the contract in the event of the
defendant making default was the execution of the
decree, and not a suit in the Civil Court—Held that
a suit would not lie in the Small Cause Court to

SMALL CAUSE COURT, MOFUSSIL.

—continued.

2. JURISDICTION—continued.

175. Immoveable property—*Provincial Small Cause Courts Act (IX of 1887),* sec. 11, arts. 4 and 13—*Hereditary allowance—Bombay General Clauses Act (Bom. Act III of 1866).*—Plaintiffs sued in the Court of Small Causes at Poona to recover Rs. 400 for arrears alleged to be payable to them under an agreement by the defendant's father to pay Rs. 150 per annum, of which Rs. 50 were for maintenance of plaintiff's mother and the residue was to be applied towards defraying the expenses of a temple. The terms of the agreement showed that it was intended that the payment for the expenses of the temple should be continued in perpetuity. The Judge dismissed the suit, holding that being for a hereditary allowance it was a claim for immoveable property and came under cls. (4) and (13) of sch. II of the Provincial Small Cause Courts Act (IX of 1887). On application by the plaintiffs to the High Court under s. 25 of the Provincial Small Cause Courts Act (IX of 1887).—*Held*, reversing the decree, that the suit was not for possession of immoveable property or recovery of an interest in such property within the meaning of art. 4, nor did it come within the purview of art. 13 of sch. II of the Act. The Small Cause Court had therefore jurisdiction to entertain the suit. *VISHNU GANESH JOSHI v. YASHA-VANTHABAO* . I. L. R., 21 Bom., 387

176. Intestacy—*Suit for money as share under an intestacy.*—The decree of a Small Cause Court was annulled as made without jurisdiction in a suit to recover money as personal property in respect of a share under an intestacy. *GHANSHYAM SINGH v. AVNA DOSSEE* . 17 W. R., 46

NOBIN CHUNDER GOSSAWE v. DHRIO MOYEE DEBBE . 17 W. R., 520

177. *Suit for possession of personal property as heir under former decree.*—A suit for possession of personal property which the plaintiff has been, by a decree in a former suit, declared entitled as heir of a third person, is not a suit coming within the second exception to s. 6 of Act XI of 1865, and is therefore, where the value is not beyond the jurisdiction, cognizable by a Court of Small Causes, and consequently no appeal lies from the decree in such a suit. *MOHESHWAR MONDUT v. KOTLAH NATH MONDUT* . 7 C. L. R., 71

178. Maintenance—*Suit for arrears of maintenance—Right to maintenance.*—A Small Cause Court has jurisdiction only as regards arrears of fixed maintenance, but not to determine the right to receive it. *BYDUGWAN CHANDER BOSE v. BINDOOBASHINTEE DOSSEE* . 6 W. R., 286

179. *Suit for arrears of maintenance.*—*Held* that a suit by a widow for arrears of maintenance fixed by a Munsif's decree, where defendant urged non-liability on the ground that the property of plaintiff's husband was exhausted, and that defendant had already brought an action in the Munsif's Court for release from his liability, was a

SMALL CAUSE COURT, MOFUSSIL.

—continued.

2. JURISDICTION—continued.

169. Endowment—*Suit by Alkhoneedan for share of property under terms of certain endowment—Provincial Small Cause Courts Act (IX of 1887),* sch. II, cl. 18.—A suit by a Mohammedan to obtain a share in property distributable under the terms of a certain endowment is a suit of the nature contemplated by cl. 18 of sch. II of the Provincial Small Cause Courts Act (IX of 1887), and therefore not cognizable by a Court of Small Causes. *MIRZA ATU SHAH v. MUHAMMAD HUSSAN*

170. Foreign judgment—*Jurisdiction—Suit on foreign judgment.*—A suit upon a foreign judgment is not cognizable by a Court of Small Causes established under Act XI of 1865. *ANKARATTE NARAYANA KRISHNAN KARAYAN v. KOONERI PITO PITO* . I. L. R., 6 Mad., 191

171. *Suit on foreign judgment of Court of Native State.*—No suit is maintainable in a Small Cause Court in British India founded upon the judgment of a Court situate in a Native State. *BUVANAISHANKAR SHIVAKRAM v. PURSADJI KALIDAS*

172. Government—*Suit to which Government officials are parties—Act XI of 1865,* ss. 1, 6, and 9—*Local Government.*—A suit, within the pecuniary and other limits prescribed for Courts of Small Causes, in which an officer of Government is a party in his official capacity, may be entertained by a Court of Small Causes in the mofussil. The phrase "Local Government" used in s. 9, and defined in s. 1 of Act XI of 1865, does not apply to the Collector of a district, but rather to the Governors or Lieutenant-Governors of Presidencies or Commissioners of Provinces. *DESAIJI MANJJI v. HEMAD-ALTI IMAM HAIDARABAKSHA* 10 Bom., 308

173. *Suit for compensation for damages against the Secretary of State—Provincial Small Cause Courts Act (IX of 1887),* sch. II, art. 3.—A suit was brought against the Secretary of State in a Mofussil Small Cause Court for compensation for damages done to an oil-mill by the officials of the Nalhati State Railway. *Held* that the suit was not within art. 3, sch. II of Act IX of 1887, and that it was cognizable by the Small Cause Court. *PUNWARI LAT MOOKERJEE v. SECRETARY OF STATE FOR INDIA* [I. L. R., 17 Cal., 290

174. *Provincial Small Cause Courts Act (IX of 1887),* sch. II, art. 3.—*Karnam in a zamindari—Officer of Government—Public servant.*—The plaintiffs, being the lessees of a settled zamindari, brought a suit in a Small Cause Court against a karnam in the zamindari to recover damages sustained by reason of the defendant's default in keeping certain accounts, etc. *Held* that the karnam was not an officer of Government, and that the suit was maintainable under the Provincial Small Cause Courts Act. *ORR v. NERARAGAN* I. L. R., 18 Mad., 395

SMALL CAUSE COURT, MOFOUSSIT | SMALL CAUSE COURT, MOFOUSSIT

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2 JURISDICTION—continued.

not cognizable by the Small Cause Court. KAYAKUR
DOSTER & BISHNOYATI SHAWA . 9 W. R., 214

ИЗДАНИЕ КОМПЛЕКТА В 1974 Г. 174

1. *Journal of the American Medical Association*, 1997; 277: 1033-1038.

[illegible]

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1917
[T. L. B., 16 Cal., 1914]

1871. Forest Act (13 of 1857), s. 38, s. 41—
 (1) For purpose of maintaining the forest in bond

[illegible]

Provincial Court of Small Causes under cl 38 of
 sub II of Act IV of 1887 BANGALORE 2

182. _____ Sent for

Treats of maintenance—Provincial Small Courts
 (IX of 1857), ch. II, art. 38—A suit

of various of management payable under a written agreement does not lie in a Provincial Small (S. 40)

LI. L. R., 30 Mad, 20

183. Suit by Plaintiff for maintenance by a husband—*Hill* that a suit for maintenance by a husband is maintainable in a court of equity.

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KANCHANDEVI DESHMUKH & SAVITRIBAI

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184. Sent for main

reached — In the absence of any special bond or other contract for the payment of maintenance, a suit for

causes in the morbid

NOBIL KALIK DEME & HANDBUCHEN DEUTSCH

185. _____ Suit for injury

by James M. Smith and John W. Smith

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11500, was not compensable by a Court of Small Causes under Act XI of 1865, there being no allegation that

The maintenance claimed was secured by bond — special contract. *John Yates Delee v. Hind*

WILLIAM D. B. & S. C. CO., INC., 7, FLORENCE
ALMA CHRISTIAN DRUGS & GROCERIES

CO "THOUGHT IT WAS A JOKE"

SMALL CAUSE COURT, MOUSSA.

—continued.
2 JURISDICTION—continued.

210. *Suit for money received for plaintiff's use*—When one of two or more joint creditors receives full payment of the debt, he does so under the implied contract that he will deliver shares to the other joint creditors. Such implied contract falls under the purview of s. 6 of Act XI of 1865, and a suit will lie in the Small Cause Court by a creditor to recover his share.

6, *Hareo Mohan Roy v. Khetimone Dosee*, 18 W. R. 372, *Small Cause Court*, 18 W. R. 372, *Small Cause Court*.

18 W. R. 372, *Small Cause Court*, 18 W. R. 372, *Small Cause Court*.

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18 W. R. 372, *Small Cause Court*, 18 W. R. 372, *Small Cause Court*.

—continued.
SMALL CAUSE COURT, MOUSSA.

211. *Suit for shares of compensation awarded for land acquired for public purposes*—A suit was brought by some of the co-shares in a partition of a small land which had been taken for public purposes under the Land Acquisition Act against the other co-shares in the partition for the proportion due to them out of a sum of money which had been awarded as compensation for the acquisition of the land and which the defendants had received. Held that the suit was one for money and cognizable by a Court of Small Causes. *Sohn v. Mahabir Das*, 1 T. R. 6 All 449, followed.

1 T. R. 6 All 449, followed.

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SMALL CAUSE COURT, MOFUSSIL.

2. JURISDICTION—continued.

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220. Suit for order to enforce mortgage-decree against person and property of defendant.—A suit to obtain an order for the Court that a decree upon a mortgage of a certain house should be enforced against the person and property of the defendant, who had purchased the house at auction subject to the plaintiff's mortgage, but had subsequently removed to the plaintiff's mortgage, not being a claim for debt, damages, or for the recovery of property, is not cognizable by a Court of Small Causes. *Omer Kuvir v. Lata Shewan* LAT 4 C. L. R., 291

221. Mortgage of moveable property.—Suit for redemption.—Where the mortgage property has been pledged in a mortgage bond as security for a loan, and the amount due on the mortgage is tendered but declined, the mortgagee's suit for possession will lie in the Small Cause Court. But if there has been tender and the suit is for possession after ascertainment of defendant's lien on the property, the Small Cause Court has no jurisdiction in the matter. *Bhubotabin Ghosany v. Jyogendra Nath Lewary* NAT 16 W. R., 58

222. Moveable property.—Act XI of 1865, ss. 19 and 20.—Huts.—Huts are not "moveable property" within the meaning of Act XI of 1865. *Raj Chunder Bose v. Dhanmahandya Bose* [2 B. L. R., A. C., 77: 8 B. L. R., 510 note 10 W. R., 416

223. *Bohini Kant Ghose v. Mahabharat Nag* [8 B. L. R., 514 note: 10 W. R., 258

224. *Contract, Kasi Chandra Dutt v. Jadvanath Choudhary* [8 B. L. R., 508: 17 W. R., 309

225. *Sugar mill—Moveable property.*—A stone sugar-mill was held to be moveable or personal as distinguished from immovable property. *Hurungat Singh v. Arun Singh* 4 N. W., 15

226. *Trees—Grow-ing crops—Moveable property.*—Trees and growing

SMALL CAUSE COURT, MOFUSSIL.

—continued.

2. JURISDICTION—continued.

216. *For recovery of a sum of money lent upon the pledge of personal property, and asked that the moveable property pledged might be declared liable. Held that a Small Cause Court had jurisdiction to entertain a suit to enforce a contract pledging moveable property.* *Apparu Pillai v. Subbaya Muppan* [2 Mad., 474

217. *Wend v. Rinchiden* 14 W. R., 214

218. *Suit to recover money on bond and to declare lien on property mortgaged by bond.*—A suit, the object of which is not only the recovery of money due upon a bond, but also a declaration of the plaintiff's lien on the property mortgaged by the bond, is not cognizable by the Small Cause Court. *Raj Narayan Mookerjee v. Sanoda Dutt* 6 B. L. R., Ap., 39

219. *Suit for enforcement of hypothecation against moveable property.*—Act XI of 1865 (Moussil Small Cause Courts Act), s. 6.—A suit was brought in a Small Cause Court to recover a sum of money from the defendants personally, and by enforcement of hypothecation of certain cattle by their attachment and sale. The cattle were in the hands of other persons, who had purchased them at an auction-sale in execution of a decree against the original defendants, and who were added as defendants under s. 32 of the Civil Procedure Code, 1882. *Held* that the suit was not cognizable by a Small Cause Court, inasmuch as it did not fall under the category of a "suit for money due on a bond or other contract," or of a "suit for personal property, or for the value of such property," within the meaning of s. 6 of the Moussil Small Cause Courts Act (XI of 1865). *Ram Gopal Shah v. Ram Gopal Shah, 9 W. R., 136, and Godha v. Nish Kam, 1. L. R., 7 All., 132, referred to. Surappat Singh v. Fairakgiri* 1. L. R., 7 All., 855

220. *Suit for enforcement of hypothecation against moveable property.*—Act XI of 1865, s. 6.—A suit by the assignee of a registered mortgage-bond hypothecating certain crops to enforce the hypothecation is not a Small Cause Court suit within the meaning of s. 6 of Act XI of 1865, in which a second appeal would be barred by s. 586 of the Civil Procedure Code. *Surajpal Singh v. Jaimangir, 1. L. R., 7 All., 455, followed. Ram Gopal Shah v. Ram Gopal Shah, 9 W. R., 136, and Apparu Pillai v. Subbaya Muppan, 2 Mad., 474, referred to. Katka Phasad v. Chandan Singh* 1. L. R., 10 All., 20

SMALL CHINESE COURT, MOUSSILL.

JURISDICTION—continued.

crops are not movable property. **TOYAN LAMUD**
c. HAYEN MACHIN MOOKKEMER 24 W. H. 384

Growing crops are "immovable property," and
execution of a decree of a Small Cause Court cannot
be had against them under a 19 of Act VI of 1865

Gopal Chandra Biswas v. KANAYAT SINGH
16 B. L. R. 184: 13 W. H. 276

MEHARAB SINGH v. SATO YAHID HAKKI
16 Bom. A. C. 90

Suit for possession.

228. —

nor for the annual delivery of the produce, so long as
the tree should be productive. But a suit for a de-
finite quantity of the produce of the tree, or the value
thereof, may be maintained by a Small Cause Court
if the value be within the prescribed limit. **SHAKTI**
LAKSHMINARAYANA v. SIVA VEKATRAYANAD
[3 Mad. 237

229. —

upon trees—**Suit for compensation for the wrongful
felling of fruit upon trees—Immovable property**
—When the damage or demand does not exceed in
amount or value the sum of five hundred rupees, a
suit for the fruit upon trees, or damages in lieu
thereof, is a suit cognizable in a Mofussil Court of
Small Causes, the fruit upon trees not being immove-
able property, but being movable property within
the meaning of s. 3 of Act XI of 1865. **SHAM**
KHAY v. KANAYAT KHAN 1 L. R. 3, 311, 168

230. —

to recover a share of a value less than Rs 500 must be
brought in the Small Cause Court. A third, espe-
cially when severed from the house, is movable pro-
perty. **RAJANAR MOOKKEMER v. PANAYATI**
MOOKKEMER 7 B. L. R. 41: 16 W. H. 489

231. —

Suit to recover
butia leviable in the crops of village lands—A
land to recover butia leviable on the crops of village
lands is not a suit for an interest in land but for a
share of produce severed from land and is cognizable
by a Mofussil Court of Small Causes. **NAVY PIRA v.**
SHAO SHIMUNTHAN 1 L. R. 8, Bom. 28

232. —

Suit by landlord mahars to recover "ova"
—**Immovable property, What is—A suit for butia**
or ova is a claim in respect of a her belonging to and
forming the emolument of, an hereditary office

233. —

able between the heirs of hereditary officiating ma-
hars of a village and the heirs appurtenant to the her-
editary office of a village joban, or the office of an he-
reditary priest of a temple and its emoluments. The

60—**Professional Small Cause Courts Act (IX of**
1884, s. 39.

234. —

JURISDICTION—continued.

of the former are not personal property.
1 L. R. 8 Bom. 613

Suit for share
of hereditary allowance.—A suit by an allied
of hereditary allowance.

235. —

236. —

237. —

238. —

239. —

240. —

241. —

SMALL CAUSE COURT, MOFESSIL.

—continued.

2. JURISDICTION—continued.

1887), *sch. II, para. 1—Order of a Local Government*.—The Municipality at Tuticorin demanded Rs50 as profession tax from the South Indian Railway Company, which had already paid profession tax to the Municipality at Nagerpettam. The Company complied with the demand under protest, and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsifs Court. *Held* the Court had jurisdiction to hear and determine the suit; *ss. 49 and 50 of the Madras District Municipalities Act of 1884 and sch. II, cl. 1, of the Provincial Small Cause Courts Act (IX of 1887) are not applicable to such a suit.* *TUTICORIN MUNICIPALITY v. SOUTH INDIAN RAILWAY CO.* [I. L. R., 13 Mad., 78]

240. *Provincial Small Cause Courts Act (IX of 1887), sch. II, arts. 8 and 13—Calcutta Municipal Consolidation Act (Beng. Act II of 1888), ss. 117 and 119—Suit to recover occupier's share of tax by the owner of a buslee.—A suit by the proprietor of buslee land for the recovery of Municipal taxes from the owner of a hut in the buslee is cognizable by the Provincial Small Cause Court.* *BRADY v. MITHRA v. GORI SHAKRANI* [I. L. R., 23 Cal., 835]

241. *Order of Civil Court—Suit to set aside miscellaneous order of Civil Court.—A Small Cause Court has no jurisdiction to set aside a miscellaneous order passed by a Civil Court.* *BUNSEEDHAR v. KUDDER LAL* [I N. W., 112; Ed., 1873, 198]

242. *Partnership account—Suit for partnership account.—A suit for an account of a partnership is not cognizable by a Small Cause Court.* *SHUKUR CHUNDER KUR v. RAM SHUKUR SURMAH* [10 W. R., 214] *Act XI of 1865, s. 6.—Where defendant had been plaintiff's servant in charge of plaintiff's shop, on the understanding that he was to be remunerated by a small share of the profits in lieu of fixed wages, a suit to recover the balance after deduction of such remuneration was held to be a suit on a demand cognizable by a Small Cause Court, and not for balance of partnership account.* *KAR KANYE SHAMA v. BYKUNATH SHAMA* [15 W. R., 89]

244. *Suit involving question of partnership account.—A, B, and C, the joint owners of an estate, sued their tenant in the Munsifs Court for rent; the tenant defended in the suit by proving payment of the entire rent to B. A then brought a suit in the Small Cause Court against B for damages equal in amount to the one-third of rent due to him and the costs incurred by him and awarded against him in the rent-suit in the Munsifs Court. B pleaded that he had expended the share of rent due to A for the benefit of the joint estate, and that A had collected the rents of other meahals belonging to the joint estate, and had not accounted for such rents. *Held* that the suit, being one which involved questions of partnership account between*

245. *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 29 (c)—Suit by a retired partner for the contribution due on account of his retirement.—A suit by a retired partner for money alleged to have been agreed to be paid to him by the continuing partners in consideration of his retirement is not a suit for balance of a partnership, and is not excluded from the jurisdiction of a Court of Small Causes.* *RAVI LAL v. CHANGA MAL* [I. L. R., 19 All., 513]

246. *Settlement of accounts—Promise to pay balance.—The plaintiff and defendant, having carried on business in partnership, settled their accounts and struck a balance of Rs196, which the defendant agreed orally to pay in a month. The plaintiff now sued in a Small Cause Court for the amount, not asking for an account to be taken. *Held* that the suit was maintainable.* *MARIKUTTU v. SAMINATHA PETAIA* [I. L. R., 21 Mad., 366]

247. *Prisoners' Testimony Act (XV of 1869)—Allegation of Small Cause Court, Judge of—Defendant in custody.—A Judge of a Small Cause Court in the mofussil could direct the jailor to bring up before the Court, at the hearing of the suit, a defendant committed to custody, under s. 78 of Act VIII of 1869, without having recourse to the procedure under Act XV of 1869.* *KIRABAI MAJI v. NARAYAN DAS* [5 B. L. R., 215; 13 W. R., 278]

248. *Purchase-money—Civil Procedure Code, s. 815—Suit to recover purchase-money—Suit by purchaser at Court-sale when debtor had no saleable interest.—A suit brought, under s. 815 of the Code of Civil Procedure, by a purchaser at an execution-sale to recover the purchase-money, when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, is not a suit of a nature cognizable by a Small Cause Court constituted under Act XI of 1865.* *PACHAYAR PAN v. NARAYANA* [I. L. R., 11 Mad., 269]

249. *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 11—Suit to recover purchase-money by purchaser ejected from possession of his purchase by a third person.—Where a plaintiff brought a suit in the Small Cause Court to recover from the defendant the purchase-money which he had paid for a piece of land, but from which, however, he had been ejected by order of a Civil Court at the instance of a third person, it was held that the exception to art. 11 of the second schedule to the Provincial Small Cause Courts Act (IX of 1887) was no bar to the maintainability of the plaintiff's suit, although, as a defence to the action, it*

—continued.

2. JURISDICTION—continued.

the joint proprietors of an undivided estate, could not be entertained in a Court of Small Causes. *RAYTON v. ACHARYE v. PRAKASHCHAND ACHARYE* [I. L. R., 6 Cal., 551; 7 C. L. R., 557]

255. Suit for rent
—Kaiser to prove agreement—In suit for rent of holding which the plaintiff alleged to be included within certain homestead and which he owned in part and to use for sale certain personal property, the defendant testified that the said holding was a piece of land.

to him or to the defendant, and would require to be settled in the Civil Court. KANDRAYAM BISWAS & KORAT BUDHAKAR DOSTER . 21 W. R., 378

256
under-tenant—Assignment of rent—*Tenant and*
plaintiff held an under-tenure within a lease granted
held by *B* within *D* the landlord and under a
separate grant from *B* paid to the landlord *D* a sum
of money as rent due by *B* to *D*. (Ultimately *D*,
ignoring such payment, recovered the rent from *B* by
a separate suit in which no plea of payment was
made.)
An action was brought against
the landlord defendant *D* held that, in the
absence of any authority from *B* to plaintiff to set off
his payment to *D* against the rent due to *B*, the
Collector had no jurisdiction to try whether *B* owed
the plaintiff a sum equal to the rent, and that the

1908, 12 W. B., 180

537. *Land—Damages—Rent*—Suit for rent or hire for land which defendant used and caused to be used for business and repainting to and from his steamship, *field* that if there was no express hiring, the defendant ought to be and for damages for trespassing upon the plaintiff's land, that if he agreed to pay for the use of a way across the land, it would not be rent, and that in either case the Small Causes Court was competent to entertain the suit. *Barre v. Lord* 5 W. R., 8. C. C. R. 18.

land with buildings - In a suit for rent for the
where the principal subject of the entire occupation
is a house land, the residue (if any) of the holding
being merely subordinate, the Small Cause Court has
jurisdiction. But when the principal subject is an
agricultural land, the building or buildings being
more accessories thereto the Small Cause Court will
not have jurisdiction. CHUDYRESE - G. RAYAN

11. 1. 1958, 2. 3. 1958

261—Registration Act—Suit on bond under s 52, Registration Act, 1864—The Court which had jurisdiction in a proceeding to enforce payment, under the provisions of the Registration Act—

name of the application
 K. S. B. L. Mitter
 4 W. R. B. C. C. Ref. II
 BAKKUNST SEN & GORAI GAZER 18 W. R. B. 199
 which was made under a ■ of Act 21 of 1866
 1862 Bond registered under Act I of 1866, s 53 - A and upon a bond

254. *Suit by land-owners v. Pascua Morton & W. H. Claiborne.* On the 1st Cause Court has jurisdiction. Mrs. Mary Small Cause Court has jurisdiction in respect of which for the breach of a contract in respect of which a *Writ* that such a suit was not one for realty, but trees and appropriate the produce for a single reason, I limited agreed to its defendant pay certain date-*mission to topdote trees*—*Suit for money for per-*
253. *Ment—Suit for money for per-*
Bachman Chatterbox v. L. R. H. Cole, 1889
made in such a suit. *Barlow Brumby* v. a decree
based on an application for extension of a decree

—continued—

may be necessary for the defendant to show that he had a good title. GOOL KHAM v. TERAR GOALA [14 C. W. N., 63]

SMALL CAUSE COURT, MOUSSIL

—continued.

2. JURISDICTION—continued.

has no jurisdiction to entertain a suit for arrears of rent of homestead or bastu land under the provisions of the Provincial Small Cause Courts Act (IX of 1887). *Uma Churn Mandat v. Bihari Bewan* (IX of 1887).

260. I. L. R., 15 Bom., 174

Suit for sum stipulated to be paid for use of private path.—A suit upon a contract for the payment of a stipulated sum per mensure to the owner for the leave granted by him to the defendants to use a path across his land is cognizable by the Small Cause Court. *Wagoria Persad Shaw v. Shukshar Sirdar*

261. [4 W. R., S. C. C. Ref., 10

Suit on instalment-bond for muzzur or salami.—Plaintiff sued in a Small Cause Court on an instalment-bond for Rs. 181. The bond had been executed for muzzur or salami temporarily with the execution of a potah and kabuli, by which the defendants agreed to pay the plaintiff Rs. 335 a year for two years, as rent for certain land. The potah and kabuli had not been registered. A previous suit brought by the plaintiff, under Act X of 1859, had been therefore dismissed, and no oral evidence was admitted to prove the terms of the potah and kabuli. Held the suit on the bond was properly cognizable by the Small Cause Court as a simple debt due under the bond. It was clearly not for rent, nor was it an abwab or illegal cess; whether it was muzzur or salami was immaterial. *Dinayath Mookerjee v. Deb Nath Muttick*

[5 B. L. R., Ap., 1: 13 W. R., 307

Suit for rent and a sum as penalty for non-payment.—Where a party sued for Rs. 17-8 as rent, and a like sum as penalty for non-payment thereof, it was held that he was in fact suing for a penalty equal to double the amount due, and that a Small Cause Court was competent to entertain the suit. *Hingay Sowdagur v. Boistva Churn Ojan* 6 W. R., Civ. Ref., 5

263.

Years of rent and assessment of rate.—A suit for arrears of rent of land for which no rent has ever been paid, where the plaintiff also asks for assessment of the rate of rent, is not cognizable by a Small Cause Court. *Gopal Nath Ghose v. Kedar Nath Chandra Nath Choudhary v. Nubur Bursi*

264. 23 W. R., 426

Suit for rent.—A suit to assess rent at an increased rate upon the defendants, and for a decree for rent at such rate in respect of land situated in a town, and upon which either a house or shop stands, is not a suit for rent within the meaning of s. 6, Act XI of 1865, and is maintainable in the ordinary Civil Courts, and not in the Small Cause Courts. *Joy Kishore Chowdhary v. Nubur Bursi*

265. [17 W. R., 178

Suit for rent of land used for building purposes.—A suit for the rent of land used for building purposes is cognizable in a

SMALL CAUSE COURT, MOUSSIL

—continued.

2. JURISDICTION—continued.

Moussil Court of Small Causes. *Peard Bwan v. Nokor Kurnokan* 19 W. R., 308

266. 21 W. R., 5

Suit on instalment-bond for arrears of rent.—A suit upon an instalment-bond given for arrears of rent is cognizable in a Small Cause Court. Also a suit by a judgment-debtor to recover money paid by him to be applied in satisfaction of a decree under Act X of 1859, but not so applied by the decree-holder, *Shree Churn Ghosal v. Mahomed Ally. Tannar Churn Roy v. Gopal Kisto Roy* [2 W. R., S. C. C. Ref., 5

267.

Suit on document given for arrears of rent.—Act XI of 1865, s. 6.—A suit to recover arrears of rent on a kabod kish-bundi, under which defendants had been appointed a kishadkar to collect rents, having been filed before the Munsif, it was returned as being cognizable by the Court of Small Causes. The Judge of the latter Court, seeing that the instalment-bond on which the suit was brought was exactly in the form of a kabuli, and that the defendant was in possession of the land for which the rent was claimed, referred the question of jurisdiction to the High Court, which held that the money which the defendant contracted to pay, being rent, could not be sued for under Act XI of 1865. *Peard Bwan v. Nokor Kurnokan v. Assad Khan* 18 W. R., 444

268.

Suit for rent where there is no contract to pay it.—A suit was brought in the Small Cause Court by a zamindar against a raiyat for arrears of rent. The plaintiff alleged that he had tendered potahs which the defendant was bound to accept, and the defendant alleged that the rent specified was such that he was not bound to accept the potahs. Held that the suit was not cognizable by a Court of Small Causes, there being no contract between the parties for the payment of rent. *Venkatacharya Raddiah v. Narayana Reddy* 4 Mad., 393

269.

Suit for arrears of phukur.—A suit for arrears of rent of the description known as phukur cannot be tried by a Small Cause Court. *Gobind Sookor v. Gokor Bhanu* 23 W. R., 304

270.

Act XI of 1865, s. 6—Jurisdiction.—*Suit for refund of rent voluntarily paid to a wrong person.*—A Mofussil Court of Small Causes has no jurisdiction under s. 6 of Act XI of 1865 to entertain a suit for a refund of money paid as rent, in which it is found that the payment was made to a wrong person voluntarily, and under no mistake as to that person being entitled to receive it, but with the object of defrauding an intermediate tenant-holder. *Ram Chand Dutt v. Mosai Samant* I. L. R., 11 Cal., 738

SMALL CAUSE COURT, MOFUSSIL

—continued.

2. JURISDICTION—continued.

under s. 15 and sch. II, art. 8, of the Provincial Small Cause Courts Act, 1887. A second appeal will lie in such a suit, though the amount or value of the subject-matter of the original suit does not exceed R500. *VEDACHALA MUDDALI v. RAMASAMI RAJA*

[I. L. R., 22 Mad., 229]

Contra, *SOUNDARAM AYYAR v. SENNA NAICKAN*

[I. L. R., 23 Mad., 547]

decided by a Full Bench and overruling the above case.

279. ———— *Suit by tenant for excess payment of rent—Civil Procedure Code (Act XIV of 1882), s. 586—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), s. 144.*—A suit between landlord and tenant of the recovery by the tenant of excess payments taken by the landlord in respect of the rent of the holding, and not exceeding R500, is a suit cognizable by the Small Cause Court, and under s. 586 of the Civil Procedure Code no second appeal lies. There is nothing in s. 144 of the Bengal Tenancy Act to override the provisions of s. 586 of the Civil Procedure Code, as it determines only the venue and has no bearing upon the nature of the suit. *RANGO ROY alias RUNG LAL ROY v. HOLLOWAY*

[I. L. R., 26 Calc., 842
4 C. W. N., 95]

280. ———— *Suit by a landlord against a tenant for a certain sum payable by him out of the rent to a third person by assignment—Whether such a suit is one for rent or for damages.—Held (by the Full Bench) that a suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent and not for damages.* *Rutnessur Biswas v. Hurish Chunder Bose, I. L. R., 11 Calc., 221*, referred to. *Mohabut Ali v. Mahomed Faizullah, 2 C. W. N., 455*, approved of. *BASANTA KUMARI DEBYA v. ASHUTOSH CHUCKERBUTTY*

I. L. R., 27 Calc., 67
[4 C. W. N., 3]

281. ———— *Suit for rent in kind or its money value—Suit for rent—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 35—Bengal Tenancy Act (VIII of 1885), s. 3, cl. 5.*—A suit for produce rent or its money value is a suit for rent under the Bengal Tenancy Act, and not a suit for damages for breach of contract; such a suit is therefore not cognizable by a Provincial Small Cause Court. *Tajuddin Khan v. Ram Parshad Bhogal, I. L. R., 1 All., 217*, followed. *Lachman Parshad v. Hoblas Mahton, 2 B. L. R., Ap. 27: 11 W. R., 151*; *Mullick Amanut Ali v. Ok'oo Pasi, 25 W. R., 140*; and *Junna Doss v. Gausee Meah, 21 W. R., 124*, referred to. *SKOONA MEHTA v. RAJANI BISWAS*

[1 C. W. N., 55]

282. ———— *Landlord and tenant—Suit for rent by an assignee of landlord whether suit for rent or money—Provincial Small*

SMALL CAUSE COURT, MOFUSSIL

—continued.

2. JURISDICTION—continued.

Cause Courts Act (IX of 1887), sch. II, art. 8.—*K and U* owned in equal shares some lands appertaining to a talukh; in execution of a decree, *K's* share in all the lands and *U's* share in some of the lands were sold and purchased by one *B*, who in Assar 1301 sold to the plaintiffs half of the land and the whole of the rent; plaintiffs again sold to the *pro forma* defendants half of the lands which they had purchased and also half of the arrears for 1300. Plaintiffs brought a suit for recovery of the whole rent of 1300, the persons to whom they had sold a portion of those arrears being made *pro forma* defendants. The claim was not exceeding R500 in value. *Held* that the suit brought by the assignee against the tenant is a suit to recover the rent within the meaning of art. 8 of sch. II of the Provincial Small Cause Courts Act. That the money was due as rent at the time of the assignment and the assignment did not deprive it of that character, so far, at all events, as the tenant was concerned. *Sama Soonduree Dossee v. Brindaban Chunder Mozoomdar, Marsh., 199*; *Lall Mohun Singh v. Troyluckonath Ghose, 14 W. R., 456*; and *Reedoy Mohee v. Sibbold, 15 W. R., 344*, followed. *Lalla Bhugwan Sahoy v. Sungessur Chowdhry, 19 W. R., 431*, distinguished. *MUNRAR v. LOKNATH ROY*

4 C. W. N., 10

283. ———— *Suit by an assignee of arrears of rent after they fall due, whether cognizable by the Small Cause Court—Bengal Tenancy Act (VIII of 1885), s. 3, sub-s. 5.—Provincial Small Cause Courts Act, sch. II, art. 8.—Held by the Full Bench (BANERJEE J., dissenting) that a suit brought by an assignee of arrears of rent, after they fell due, for the recovery of the amount due, is a suit for rent, and therefore excepted from the cognizance of the Court of Small Causes.* *SRISH CHUNDER ROSE v. NACHIM KAZI*

[I. L. R., 27 Calc., 827
4 C. W. N., 357]

MOHENDRA NATH KALAMAREE v. KAILASH CHANDRA DOGRA

4 C. W. N., 605

284. ———— *Sale-proceeds—Suit for refund of moneys paid under order of Court.*—A suit to recover a refund of moneys paid under an order of Court is not cognizable by a Court of Small Causes. *GRISH CHUNDER MUNDUL v. DOORGA DOSS*

[I. L. R., 5 Calc., 494]

285. ———— *Act XI of 1865—Civil Procedure Code, 1882, s. 295—Suit for refund of assets paid in execution of decree.*—A suit under s. 295 of the Code of Civil Procedure to compel refund of assets paid in execution of a decree to a person not entitled thereto is cognizable by a Court of Small Causes constituted under Act XI of 1865. *Shahi Ram v. Shib Lal, I. L. R., 7 All., 378*, dissented from. *HARIHARA v. SUBRAMANYA*

[I. L. R., 9 Mad., 250]

286. ———— *Second appeal—Sale-proceeds, Suit for share of.*—A suit by one decree-holder against another for the money received

SMALL CAUSE COURT, MOFUSSIL. —continued.

2 JURISDICTION—continued.

by the latter on a division between them of the proceeds of an execution-sale as his share of such proceeds, under the order of the Court executing the decrees, is a suit of the nature cognizable in a Court of Small Causes and consequently, where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit. **MATA PRASAD v. GAURI** . . . **I. L. R., 3 All., 59**

287. ————— *Civil Procedure Code, 1892, s. 295—Suit for refund of proceeds of execution-sale—S and L held mortgage-bonds executed in their favour by the same person. S's bond was dated the 10th June 1892, and was registered, the registration being compulsory, L's bond was of prior date, the 30th December 1890, and was not registered, the registration being optional. Both instituted suits on their bonds against the*

defendant. The Court held that the suit of S was not barred by the limitation Act, 1877, as the mortgage-bonds were not registered, and the suit of L was not barred by the limitation Act, 1877, as the mortgage-bonds were not registered.

between the parties by an order dated the 1st May 1893, notwithstanding that S claimed the whole on the ground that he was an encumbrancer under a decree passed on a registered instrument, and therefore entitled to priority. S, being dissatisfied with this order, brought a suit to recover from L the moiety of the sale-proceeds paid to him. *Held* that the suit, being one to compel the defendant to refund assets of an execution-sale which he was not entitled to receive, and to set aside the order of the Court executing the decree, which directed the payment of the assets to him, was expressly allowed to be brought.

288. ————— *Suit for money paid for property sold where judgment-debtors had no interest—Provincial Small Cause Courts Act (IX of 1897), s. 15—Held that a suit to recover the money paid for property sold where judgment-debtors had no interest was not maintainable in a Provincial Small Cause Court.*

Prasanna Kumar Huan v. Uma Charan Hazra . . . **1 C W. N., 140**

Neither art. 2 nor art. 35, cl. (j), sub II of Act IX of 1897, excludes such a suit from the cognizance of the Small Cause Courts. **Prasanna Kumar Huan v. Uma Charan Hazra** . . . **1 C W. N., 140**

289. ————— *Proceeds of immovable property—Jurisdiction—Act XI of 1865, s. 6—Money had and received—Sale of tenure—Co-sharers—The plaintiff and the defendant were co-owners of a certain taluk. The zamindar brought*

SMALL CAUSE COURT, MOFUSSIL. —continued.

2 JURISDICTION—continued.

a suit for arrears of rent of the taluk against the defendant, obtained a decree, and in execution of that decree sold the tenure. The proceeds of the sale, after the payment of the costs of the suit, were divided between the plaintiff and the defendant. The defendant, who was a co-sharer, dissented from the division. **RAM COOMAR SEN v. RAM COMUL SEN** . . . **I. L. R., 10 Calc., 388**

290. ————— *Salvage—Suit for salvage—Abandonment of property saved—A suit for salvage, even when the saved property has been abandoned by those in charge of it, is not cognizable by a Court of Small Causes.* **KISHORE SINGH v. GURUNATH MOOKERJEE** . . . **9 W. R., 252**

291. ————— *Tax—Suit for amount of trade impost—Suit for rent—A Court of Small Causes*

is not competent to entertain a suit for the amount of a trade impost, or a suit for rent.

MUDELKAR v. THE DISTRICT OFFICE, RAJAHMUNDRAM . . . **11 M. W. R., 124**

where the defendant is the plaintiff's agent, and the plaintiff is the defendant's agent, the Court of Small Causes is not competent to entertain a suit for the amount of a trade impost, or a suit for rent.

where the defendant is the plaintiff's agent, and the plaintiff is the defendant's agent, the Court of Small Causes is not competent to entertain a suit for the amount of a trade impost, or a suit for rent.

where the defendant is the plaintiff's agent, and the plaintiff is the defendant's agent, the Court of Small Causes is not competent to entertain a suit for the amount of a trade impost, or a suit for rent.

where the defendant is the plaintiff's agent, and the plaintiff is the defendant's agent, the Court of Small Causes is not competent to entertain a suit for the amount of a trade impost, or a suit for rent.

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where the defendant is the plaintiff's agent, and the plaintiff is the defendant's agent, the Court of Small Causes is not competent to entertain a suit for the amount of a trade impost, or a suit for rent.

where the defendant is the plaintiff's agent, and the plaintiff is the defendant's agent, the Court of Small Causes is not competent to entertain a suit for the amount of a trade impost, or a suit for rent.

SMALL CAUSE COURT, MOFUSSIL

—continued.

2. JURISDICTION—continued.

Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. *Per TURNER, C.J.*—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances, the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. *MANAPPA MUDALI v. MCCARTHY*. I. L. R., 3 Mad., 192

297. — *Act XLII of 1860.*—Plaintiff sued defendant in the Small Cause Court for damages for having cut down and removed trees from plaintiff's land. Defendant pleaded that he was entitled to do so under his pottah. *Held* the Court had jurisdiction to try the question of the genuineness of the pottah. *RAGHU RAM BISWAS v. RAM CHANDBA DOBAY*

[B. L. R., Sup. Vol., 34; W. R., F. B., 127

SHUMBHOO CHOWDHRY v. COMBS. 2 W. R., 179

RAM JEEBUN KOYEE v. SHAHAZADEE BEGUM
[9 W. R., 336

SUNKUR LALL PATTUOK GIYAWAL v. RAM KALEE
DHAMIN. 18 W. R., 104

But see *INAYAT KHAN v. RAHMAT BIBI*

[I. L. R., 2 All., 97

and *PACHOO RAREE v. GOOROO CHURN DASS*
[15 W. R., 556

298. — *Question of amount due on bond mortgaging land.*—Where an ijara constituted a mortgage of the rents as a security for an amount due on a bond, with a stipulation that the balance, after paying the jumma payable by the mortgagor, should be applied by the mortgagee in payment of the bond,—*Held* that the Small Cause Court had jurisdiction to try what amount was due on the bond, and also to try the question of payment by means of the rent assigned. *MOHIMA CHUNDER MOOKERJEE v. RAM CHURN ROY*

[6 W. R., Civ. Ref., 16

299. — *Suit for arrears of malikana allowance—Act XI of 1865, s. 6.*—A sold a share in immoveable property to M by a registered deed of sale, which contained the following provision: "The said vendee is at liberty either to retain possession himself or to sell it to some one else, and he is to pay Rs 25 of the Queen's coin to me annually (as malikana), which he has agreed to pay." M mortgaged the property to B, who obtained possession; and, after the mortgage, the annual payments provided for by the deed of sale ceased. The representatives of the vendor sued M and B to recover arrears of malikana, the amount sued for being less than Rs 500. *Held*, upon a preliminary objection made with reference to s. 586 of the Civil

SMALL CAUSE COURT, MOFUSSIL

—continued.

2. JURISDICTION—continued.

Procedure Code, that the intention of the Legislature as expressed in s. 6 of the Mofussil Small Cause Courts Act (XI of 1865) was that suits directly and immediately involving questions of title to immoveable property should not be cognizable by the Small Cause Courts; that in the present suit such a question was directly involved; and that consequently s. 586 of the Code had no application, and a second appeal would lie. *Mohamed Karamut-collah v. Abdool Majeed*, 1 N. W., 205, and *Bhawan Singh v. Chatter Kuar*, *Weekly Notes, All.*, 1892, p. 114, referred to. *Pestonji Rezonji v. Abdool Rahiman*, I. L. R., 5 Bom., 463; *Qutub Husain v. Abul Husain*, I. L. R., 4 All., 134; and *Kaduresur Mookerjee v. Gooroo Churn Mookerjee*, 2 C. L. R., 388, distinguished. *CHURAMAN v. BALJI*

[I. L. R., 9 All., 561

300. — *Suit for arrears of rent.*—In a suit for arrears of rent a Small Cause Court may decide whether the renting has taken place, and pass judgment for the amount claimed, without adjudicating upon the plaintiff's title. *SUBBIRAMANIA AYYAN v. VELAYUDA DEVAR*

[1 Mad., 212

301. — *Denial of title.*—A Small Cause Court has no jurisdiction to try a suit for rent where the defendant *bona fide* sets up by way of defence that the title to the land in respect of which the rent was claimed passed from the plaintiff to others since the creation of the tenancy between the plaintiff and defendant, and that the rent claimed had accrued due after the determination of the plaintiff's title as landlord. *VENKATACHALAM v. THINMA NAIKAN*. 5 Mad., 64

302. — *Mahomedan law.*—The seven heirs of a deceased Mahomedan, under an agreement among themselves, took equal shares of 14 annas of his estate and allotted 2 annas to rehalallah, i.e., devoted the profits to charitable purposes under the management of one of their number. On the death of such manager, three of the heirs sued his tenant for a proportion of rent equal to their shares and three-sevenths on account of rehalallah. The remaining heirs opposed the claim in regard to rehalallah, which they said the plaintiffs had no right to collect, and which could only be collected by the mutwali appointed by the deceased manager, urging that, if the Court did not admit the appointment of the mutwali, it would have to decide whether collections should be made by the heirs in equal shares or in shares allowed by the Mahomedan law. *Held* that the suit ought not to be entertained by the Court of Small Causes. *KOREEM BUX v. NOMEERO*. 20 W. R., 349

303. — *Trusts—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 18—Gift, Construction of—Hindu law—Suit relating to a trust.*—A Hindu executed in favour of his daughter an instrument in the following terms: "I have hereby given to you to be enjoyed as stridhanam after my death 2,320 fanams out of 6,000 fanams which remain

SMALL CAUSE COURT, MOFUSSIL

—continued

2 JURISDICTION—continued

in lanom on the land T. The proportionate rent on 320 fanams is .65 paras. This quantity of paddy shall be enjoyed by you and your sons and grandsons hereditarily by receiving the same from my sons. After certain clauses restricting the mode of enjoyment and the power of alienation the instrument proceeded, "in the event of the said lanom being paid, that money shall be received by my sons, and shall be invested in some other property, which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same. In a suit by a grandson of the donee to recover his share of the income, —Held that the suit "related to a trust" within the meaning of the Provincial Small Cause Courts Act, sch II, art. 18. KRISHNA AYYAR v VETHILAMATHA AYYAR

[I. L. R., 18 Mad., 252]

304. —Provincial Small Cause Courts Act (IX of 1857), sch II, art. 18—*Suit by temple manager against his predecessor for damage sustained by temple—Suit relating to a trust.*—A suit by the manager of a temple against his predecessor in office for damages sustained by the temple owing to the negligence of the defendant is not cognizable by a Court of Small Causes. KRISHNAMATHAN v. BOUDHANARAJA AYYANGAR

[I. L. R., 21 Mad., 245]

305. —*Suit against person collecting or receiving subscriptions for building a temple—Trusts—Civil Procedure Code (Act XII of 1852), s. 80.*—A person collecting

under s. 30 of the Civil Procedure Code, in a Subordinate Judge's Court, and not in a Small Cause Court. MAHOMED NATHUSHAH v. HUSEIN

[I. L. R., 23 Bom., 729]

306. —*Wages—Suit for wages against European British subject.*—A suit for wages under 1820, alleged to be due from a European British subject to a native can be tried in a Small Cause Court in the mofussil. RAMJAY BHO v. COOK

[C B. L. R., Ap. 91: 14 W. R., 428]

307. —*Wrongful distraint—Suits to recover value of goods distrained for rent under Mad Act VIII of 1865, s. 27—Parties—Procedure.*—A suit to recover the value of goods distrained for rent under Madras Act VIII of 1865, and forcibly carried away from the person distraining, may be maintained in a Court of Small Causes under s. 27 of the Act. The suit may be brought either by the landlord or the person authorized to distrain. A petition for summons and order, after hearing the parties and their evidence, appear to be the fitting mode of exercising the jurisdiction. YADAMALAI THEIVAYANA TEVAL v. CARPENTRY SERTAI SAMINDAN v. SARTAI v. CARPENTRY SERTAI

[4 Mad., 401]

SMALL CAUSE COURT, MOFUSSIL

—continued

3 JURISDICTION—concluded.

308. —Provincial Small Cause Courts Act (IX of 1857), art. 35 (j)—*Madras Rent Recovery Act (Mad Act VIII of 1865), s. 15—Civil Procedure Code (Act XII of 1852), s. 64B—Suit for the value of property illegally retained—Jurisdiction of Small Cause Courts.*—Certain moveable property having been distrained under s. 15 of the Rent Recovery Act (Madras), 1865, such distraint was set aside and the property ordered to be restored to the owners. That order not having been carried out, the owners filed suits on the Small Cause side of the Courts of the Subordinate Judge and the District Munsif for the value of the property so illegally retained. Held that the suits were not excepted from the jurisdiction of the Small Cause Courts by art. 35 (j) of sch II of the Provincial Small Cause Courts Act, 1857. CHAKRADHARUDU v. VENKATARAMAYYA

[I. L. R., 23 Mad., 457]

3 PRACTICE AND PROCEDURE

(a) EXECUTION OF DECREE

309. —*Power of execution—Change of jurisdiction.*—A Small Cause Court in which a decree is passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been excluded from that Court's jurisdiction. In such execution the course to be pursued was that prescribed by ss. 230 and 26, Code of Civil Procedure, 1859. KODOO MUNDUL v. SHUSHER DHIRMUR DINGAR

16 W. R., 227

See ANONYMOUS

[B L R., Sup. Vol., 886: 9 W. R., 175]

Contra, MANSUK MOSUNDAS v. SHIVRAM DEVISINGO

I. L. R., 3 Bom., 532

GRISH CHANDER KUR v. KRISTO CHANDER CHAZAR

18 W. R., 123

ANONYMOUS

3 W. R., S. C. C. Ref., 7

310. —*Mode of execution—Interest in moveable property, Power to sell.*—Act XI of 1865, ss. 8 and 20—A Small Cause Court can sell the undivided right, title, and interest of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the second proviso of s. 6 of Act XI of 1855. Until the judgment creditor has exhausted that mode of proceeding, he is not entitled to proceed against the debtor's immoveable property under s. 20 of the Act. ANO-BALASCO CHETTY v. VENKATA KRISTANAMMA

[5 Mad., 275]

311. —*Execution of decrees—Suit against member of undivided family.*—A Court of Small Causes has not power to do more in execution of a decree against an undivided member of a Hindu family than issue process for the attachment

SMALL CAUSE COURT, MOFUSSIL

—continued.

3. PRACTICE AND PROCEDURE—continued.

and sale of the defendant's undivided right, title, and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition. *IXAHVIEN v. CHITHAMBARIEN*

[5 Mad., 312]

312. ————— *Act XI of 1865, ss. 19 and 20—Rights and interests of judgment-debtor under bond pledging immoveable property.*—The rights and interests of a judgment-debtor under a mortgage bond hypothecating to him immoveable property are not saleable by a Court of Small Causes. A sale of such rights by a Court of civil judicature, by virtue of a certificate issued under the provisions of s. 20 of Act XI of 1865, is the proper mode of execution. *BUDDOO MULL v. MAHAROO*

[6 N. W., 129]

313. ————— *Power of Court to attach salary—Civil Procedure Code, 1882, ss. 223, 268.*—A Mofussil Court of Small Causes must adopt the machinery of s. 223 of the Civil Procedure Code in all cases where execution is sought against persons or property outside its local jurisdiction. Such a Court therefore cannot attach the salary of a public officer where the same is disbursed outside its local jurisdiction. *Hossein Ally v. Ashotosh Gangooly*, 3 C. L. R., 30, followed. *PARBATI CHABAN v. PANCHANAND*. I. L. R., 6 All., 243

314. ————— *Transfer for execution—Act XI of 1865, s. 20—Transfer to, and execution by, Munsif's Court—Sale of land—Certificate not filed—Title of purchaser.*—A decree passed by a Subordinate Judge's Court on the Small Cause side was, after the abolition of the said Court, transferred by the District Court for execution to a District Munsif's Court. The District Munsif, on the application of the creditor, attached and sold certain land. No application was made by the creditor for a certificate as provided by s. 20 of Act XI of 1865, nor was any objection taken to the execution proceedings by the debtor. The creditor, having purchased the land, sold it to N, who, in attempting to take possession, was resisted by the debtor. In a suit to obtain possession of the land,—Held that N was entitled to recover. *NAGIREDDI v. RAMANNA*

[I. L. R., 7 Mad., 592]

315. ————— *Act XI of 1865, s. 20—Civil Procedure Code, 1882, s. 223—Small Cause decree of Subordinate Judge—Execution against immoveable property—Co-ordinate jurisdiction of Subordinate Judge and District Munsif—Execution by District Munsif.*—The Court of a Subordinate Judge and that of a District Munsif had jurisdiction over certain immoveable property. A Small Cause decree of the former Court having been sent by the Subordinate Judge to the Court of the District Munsif for execution against the said property under the provisions of s. 20 of Act XI of 1865, the application for execution was rejected by the Munsif on the ground that this procedure was illegal. Held that s. 20 of Act XI of 1865 was not modified by s. 223 of the Code of Civil Procedure, and

SMALL CAUSE COURT, MOFUSSIL

—continued.

3. PRACTICE AND PROCEDURE—continued.

that the Munsif's Court was therefore bound to execute the decree. *KAHANABAMA v. RANGA*

[I. L. R., 8 Mad., 8]

(b) NEW TRIALS AND REVIEWS.

316. ————— *Act XI of 1865, s. 21—Review—Limitation Act, 1877, art. 173.*—S. 21 of Act XI of 1865 held to be in force, notwithstanding the right of review given to Small Cause Courts in the mofussil by s. 623 of the Code of Civil Procedure, 1882. Where the circumstances of a case admit of a new trial, an application for such new trial is governed by s. 21 of Act XI of 1865; but where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by art. 173, sch. II of Act XV of 1877. *MADON MOHON PODDAR v. PUENO CHUNDRA PURBOT*

[I. L. R., 10 Calc., 297]

317. ————— *Civil Procedure Code, 1877, ss. 623, 624—Power to grant new trial of case tried by predecessor.*—A Judge of a Mofussil Small Cause Court was held to have jurisdiction to direct a new trial of a case tried by his predecessor, s. 21 of Act XI of 1865 not having been repealed by the Civil Procedure Code, 1877. *Per GARTH, C.J.*—The Judge, however, in dealing with applications for new trial under s. 21, should have regard to the rule laid down in s. 624 of the Code of Civil Procedure.. *SHUMSHER ALLY v. KURKUT SHAH*

[I. L. R., 6 Calc. 236: 6 C. L. R., 549]

318. ————— *New trial of ex-parte case—Re-opening of case against all the defendants.*—It may be competent to the Judge of a Small Cause Court on hearing one of the defendants to set aside an *ex-parte* decree as to all, if justice requires it, *e.g.*, if the objection is one which is common to the case of all; but he is not bound, because the decree is set aside as to one defendant, to interfere with the decision against others who do not object. *DOOKHEE KHAN v. RAJESSUREE RANEE*

[15 W. R., 371]

319. ————— *Fraudulent confession of judgment—New trial.*—A Small Cause Court Judge may on the ground of fraud and false personation grant a new trial where judgment has been passed on a confession of judgment. *IN THE MATTER OF HURO MONEE DOSSEE*. 17 W. R., 48.

320. ————— *Application for new trial, Ground for—Computation of time prescribed for application.*—An error as to date in the summons to plaintiff's witnesses is sufficient ground for setting aside an order dismissing his suit. The time prescribed by Act XI of 1865, s. 21, for an application for a re-trial is exclusive of the date on which the suit was dismissed. *BIJOY GOBIND DEB v. MUDDUN RAM PAL*

18 W. R., 454

321. ————— *Third application for new trial.*—A third application for a new trial in

SMALL CAUSE COURT, MOFUSSIL.
PRACTICE AND PROCEDURE—continued.

3. PRACTICE AND PROCEDURE—continued.
—continued.
[5 Mad., 312
Act XI of 1865,
19 and 20—Rights and interests of judgment-
debtor under bond pledging immovable property.—
The rights and interests of a judgment-debtor under a
mortgage bond are not saleable by a Court of Small Causes.
Property are not saleable by a Court of civil judicature,
by virtue of a certificate issued under the provisions
of s. 20 of Act XI of 1865, is the proper mode of exe-
cution. Buddoo Mutt v. Maharoor

[6 N. W., 129

Power of Court
Procedure Code, 1882,
ss. 223, 268.—A Mofussil Court of Small Causes must
adopt the machinery of s. 223 of the Civil Procedure
Code in all cases where execution is sought against
persons or property outside its local jurisdiction.
Such a Court therefore cannot attach the salary of a
public officer where the same is disbursed outside its
local jurisdiction. Hossein Ally v. Pabarti
3 C. L. R., 30, followed. I. L. R., 6 ALJ., 243

314. Transfer for execution—
Chaban v. Panchanand
Gangooly, 3 C. L. R., 30, followed. I. L. R., 6 ALJ., 243

Act XI of 1865, s. 20—Transfer to, and execution
by, Munsif's Court—Sale of land—Certificate not
filed—Title of purchaser—A decree passed by a
Subordinate Judges Court on the said Court, transferred
was, after the abolition of the said Court, on the appli-
cation of the creditor, attached and sold certain land.
No application was made by the creditor for a certi-
ficate as provided by s. 20 of Act XI of 1865, nor
was any objection taken to the execution proceedings
by the debtor. The creditor, having to take posses-
sion, was resisted by the debtor. In a suit to obtain
possession of the land,—Held that N was entitled to
recover. Magierreddi v. Ramanna
I. L. R., 7 Mad., 592
Act XI of 1865, s. 223—Small
Cause decree of Subordinate Judge—Execution—
s. 20—Civil Procedure Code, 1882, s. 223—Small
Cause decree of Subordinate Judge—Co-ordinate Jurisdic-
tion of Subordinate Judge and District Munsif—
Execution by District Munsif.—The Court of a
Subordinate Judge over certain immovable property had
jurisdiction over certain immovable property. A
Small Cause decree of the former Court having been
sent by the Subordinate Judge to the Court of the
District Munsif for execution against the said pro-
perty under the provisions of s. 20 of Act XI of 1865,
Munsif on the ground that this procedure was not
illegal. Held that s. 20 of the Code of Civil Procedure, and
modified by s. 223 of the Code of Civil Procedure, and

SMALL CAUSE COURT, MOFUSSIL.
PRACTICE AND PROCEDURE—continued.

3. PRACTICE AND PROCEDURE—continued.
—continued.
[I. L. R., 8 Mad., 8,
that the Munsif's Court was therefore bound to exe-
cute the decree. KANAKABAMA v. RANGA

(b) NEW TRIALS AND REVIEWS.

Act XI of 1865, s. 21—
Limitation Act, 1877, art. 173.—S. 21
of Act XI of 1865 held to be in force, notwithstanding
the right of review given to Small Cause Courts in
the Mofussil by s. 623 of the Code of Civil Procedure,
1882. Where the circumstances of a case admit of a
new trial, an application for such new trial is governed
by s. 21 of Act XI of 1865; but where the circum-
stances of a case do not admit of a new trial, but do
admit of a review, then the time within which an ap-
plication for review should be made is to be governed
by art. 173, sch. II of Act XV of 1877. MADON
MONOH PODDAR v. PURNO CHUNDRA PURBON

[I. L. R., 10 Cal., 297

Civil Procedure
Code, 1877, ss. 623, 624—Power to grant new trial
of case tried by predecessor.—A Judge of a Mofussil
Small Cause Court was held to have jurisdiction to
direct a new trial of a case tried by his predecessor,
s. 21 of Act XI of 1865 not having been repealed by
the Civil Procedure Code, 1877. Per GABRIEL, C.J.—
The Judge, however, in dealing with applications for
new trial under s. 21, should have regard to the rule
laid down in s. 624 of the Code of Civil Procedure.
SHUMSHER ALTY v. KURKUT SHAH
[I. L. R., 6 Cal., 236 : 6 C. L. R., 549

New trial of ex-
parte case—Re-opening of case against all the
defendants.—It may be competent to the Judge of
Small Cause Court on hearing one of the defendants
to set aside an ex-parte decree as to all, if justice
requires it, e.g., if the objection is one which is com-
mon to the case of all; but he is not bound, because
the decree is set aside as to one defendant, to inter-
fere with the decision against others who do not
object. DOORNE KHAN v. RAJESWARAN BAKKE
[15 W. R., 371

Irrelevant con-
fession of judgment—New trial.—A Small Cause
Court Judge may on the ground of fraud and false
personation grant a new trial where judgment has
been passed on a confession of judgment. In the
MATTER OF HUBO MORKE DOSSKE . 17 W. R., 48.

Application for
computation of time pre-
scribed for application.—An error as to date in the
new trial, Ground for—Computation of time pre-
scribed for application.—An error as to date in the
application for a re-trial is sufficient ground
for setting aside an order dismissing his suit. The
application for a re-trial was dismissed. MUDUN RAM PAT . 18 W. R., 454.

Third application for a new trial in
for new . . . A third application for a new trial in

[11 W. R., 245

tion for new trial.—An application having been made to a Small Cause Court Judge to set aside an order

that date, the Judge rejected the application without issuing notice on the opposite party. A second appli-

333. Application for

amount or tender security for payment of the same.

334. Provincial Small

attendance of his witnesses. On 29th February the plaintiff presented a petition for review on which

Accordingly done on the following day. On 21st April the petition, which preceded on grounds other

than those mentioned in s. 624 of the Code of Civil Procedure, came in for hearing before the Quinquaginta Subordinate Judge, who had assumed charge of the Court between the last-mentioned dates: he entertained the petition, but dismissed it. The plaintiff preferred a revision petition against the order dismissing his petition. *Held* by the Full Bench, following the

—continued.

cases of Karoo Singh v. Deo Narain Singh, I. L. R., 10 Cal., 80, and Fazal Bishwas v. Jawad

(c) REFERENCE TO HIGH COURT.

See SUBROOF CHANDER PATRI v. JADOO MOTILAL.

BANK OF BENGAL v. CURRIE
13 B. L. R. 396. 12 W. R. 432

335. — Ground for reference—*Ap- plication of parties*.—A Small Cause Court should

336. — Questions arising on application for new trial—*Det X of 1867, s. 1*—

ing that question, he may alter his opinion as to the principle on which damages ought to be awarded, and

Upon the new trial issues them on the proper principle. A question of law arising on an application for a new trial was a question which might be referred to the High Court for its opinion as a question within the meaning of s. 1, Act X of 1867, arising at any point in the proceedings previous to the hearing of a writ. The hearing in a new trial is a hearing within

TOWNS—continued.

Reference to High Court from—
See Letters Patent, High Court, cl. 10.
[8 B. L. R., 418]

Suit on decree of—

See Right of Suit—DECEES.

[1 Ind. Jur., N. S., 220
I. L. R., 2 Cal., 434
10 B. L. R., Ap., 35
I. L. R., 5 Cal., 294
I. L. R., 6 Bom., 7, 292
9 W. R., 399
I. L. R., 8 Bom., 1]

Summons book of—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—SMALL CASES
COURT, PROCEEDINGS IN.
[6 B. L. R., 729, 730 note
7 B. L. R., Ap., 61]

1. JURISDICTION.

(a) GENERAL CASES.

1. Extension of jurisdiction by Act XV of 1882—Act IX of 1850, s. 53—Abandonment of excess.—Whilst the pecuniary jurisdiction of the Small Cause Court was limited to Rs. 1,000, the plaintiffs brought a suit for that amount for damages for breach of a certain contract after abandoning the excess, and in that suit they elected a non-suit under s. 53, Act IX of 1850. *Held*, in a suit brought in respect of the same damages for the full amount due to them, that the plaintiffs were not precluded, by their having abandoned the excess in the former suit, from recovering the full amount sued for. *SIMPSON v. GORA CHAND DASS*
[I. L. R., 9 Cal., 473]

2. Adding sum to legal claim for purpose of giving jurisdiction—Act IX of 1850, s. 28—Act XXVI of 1864, s. 2.—A plaintiff cannot give jurisdiction to the Small Cause Court by adding to his claim sums which he could not, under any circumstances, be entitled to recover. *Sekhar Chund v. Sooringnull, 1 Hyde, 272*, distinguished. *BONOMALTA NAVY v. CAMPERELL*
[10 B. L. R., 193; 19 W. R., 20]

3. Abandonment of excess—Claim not within pecuniary limits of jurisdiction.—The Court has no jurisdiction to hear a case unless there be an abandonment of any excess above its pecuniary jurisdiction. *GORACHUND CHUNDER ROSE v. CHAKROO CHUNDER GHOSH*
[Bourke, O. C., 3; Cor., 93]

4. Leave to sue—Presidency Towns Small Cause Courts Act (XV of 1882), s. 18—Discretion, Exercise of—Refusal of leave to sue—Jurisdiction.—A tradesman in business in Calcutta sued his debtor, a resident at Lucknow, to recover a sum of Rs. 23 for goods sold in Calcutta and

TOWNS—continued.

(c) MOVABLE PROPERTY . . . 8679

(f) REGISTRATION ACT, 1866, ss. 52, 53 . . . 8681

(k) REVENUE . . . 8681

(l) SET-OFF . . . 8681

(m) TITLE, QUESTION OF . . . 8682

(n) TROVER . . . 8683

2. PRACTICE AND PROCEDURE . . . 8683

(a) GENERAL CASES . . . 8683

(b) LEAVE TO SUE . . . 8684

(c) NEW TRIAL . . . 8684

(d) REFERENCE TO HIGH COURT . . . 8686

(e) REMARKING . . . 8690

See CLAIM TO ATTACHED PROPERTY.

[I. L. R., 18 Cal., 296
I. L. R., 28 Cal., 778
4 C. W. N., 470]

See HABEAS CORPUS, WRIT OF.

[I. L. R., 1 Cal., 78]

See SUPERINTENDENCE OF HIGH COURT—

[I. L. R., 13 Bom., 642]

CIVIL PROCEDURE CODE, 1882, s. 622.

Bombay.

See EXECUTION OF DECREES—TAXPAYER

OR DECREE FOR EXECUTION, &C.

[I. L. R., 1 Bom., 82]

See PLEADER—APPOINTMENT AND APPEARANCE . . . I. L. R., 8 Bom., 105

Calcutta.

See PLEADER—APPOINTMENT AND APPEARANCE . . . I. B. L. R., A. C., 45

[2 Ind. Jur., N. S., 133; 7 W. R., 228]

Madras.

See HINDU LAW—CONTRACT—ASSIGNMENT

OR CONTRACT . . . 4 Mad., 176

[1 Mad., 150]

Execution of decree of—

See BALANCEMENT . . . 5 B. L. R., Ap., 31

Jurisdiction of—

See NEGOTIABLE INSTRUMENTS, SUM-MARY PROCEDURE ON.

[8 B. L. R., Ap., 10]

Law of—

See CONTRACT ACT, s. 27.

[14 B. L. R., 76]

Practice and procedure of—

See CIVIL PROCEDURE CODE, s. 108.

[I. L. R., 21 Cal., 269
I. L. R., 20 Bom., 380]

SMALL CAUSE COURT, PRESIDENCY

LOWE'S—cont'd.

1. JURISDICTION—continued.

in one of the suits, amounting to \$183 held that the plaintiffs, in doing so, were splitting their cause of action within the meaning of § 34 of the Small Cause Courts Act (1A of 1850) Black-Well & Co. v. SUGAR ANDREWS & BROS., O. C., 88

Act IX of 1860.

ERR LEADERS KISSOWI L. L. H, 2 Rom, 670

10. Act IX of 1850. — 27-1850 — 1850-1851 — 1851-1852 — 1852-1853 — 1853-1854 — 1854-1855 — 1855-1856 — 1856-1857 — 1857-1858 — 1858-1859 — 1859-1860 — 1860-1861 — 1861-1862 — 1862-1863 — 1863-1864 — 1864-1865 — 1865-1866 — 1866-1867 — 1867-1868 — 1868-1869 — 1869-1870 — 1870-1871 — 1871-1872 — 1872-1873 — 1873-1874 — 1874-1875 — 1875-1876 — 1876-1877 — 1877-1878 — 1878-1879 — 1879-1880 — 1880-1881 — 1881-1882 — 1882-1883 — 1883-1884 — 1884-1885 — 1885-1886 — 1886-1887 — 1887-1888 — 1888-1889 — 1889-1890 — 1890-1891 — 1891-1892 — 1892-1893 — 1893-1894 — 1894-1895 — 1895-1896 — 1896-1897 — 1897-1898 — 1898-1899 — 1899-1900 — 1900-1901 — 1901-1902 — 1902-1903 — 1903-1904 — 1904-1905 — 1905-1906 — 1906-1907 — 1907-1908 — 1908-1909 — 1909-1910 — 1910-1911 — 1911-1912 — 1912-1913 — 1913-1914 — 1914-1915 — 1915-1916 — 1916-1917 — 1917-1918 — 1918-1919 — 1919-1920 — 1920-1921 — 1921-1922 — 1922-1923 — 1923-1924 — 1924-1925 — 1925-1926 — 1926-1927 — 1927-1928 — 1928-1929 — 1929-1930 — 1930-1931 — 1931-1932 — 1932-1933 — 1933-1934 — 1934-1935 — 1935-1936 — 1936-1937 — 1937-1938 — 1938-1939 — 1939-1940 — 1940-1941 — 1941-1942 — 1942-1943 — 1943-1944 — 1944-1945 — 1945-1946 — 1946-1947 — 1947-1948 — 1948-1949 — 1949-1950 — 1950-1951 — 1951-1952 — 1952-1953 — 1953-1954 — 1954-1955 — 1955-1956 — 1956-1957 — 1957-1958 — 1958-1959 — 1959-1960 — 1960-1961 — 1961-1962 — 1962-1963 — 1963-1964 — 1964-1965 — 1965-1966 — 1966-1967 — 1967-1968 — 1968-1969 — 1969-1970 — 1970-1971 — 1971-1972 — 1972-1973 — 1973-1974 — 1974-1975 — 1975-1976 — 1976-1977 — 1977-1978 — 1978-1979 — 1979-1980 — 1980-1981 — 1981-1982 — 1982-1983 — 1983-1984 — 1984-1985 — 1985-1986 — 1986-1987 — 1987-1988 — 1988-1989 — 1989-1990 — 1990-1991 — 1991-1992 — 1992-1993 — 1993-1994 — 1994-1995 — 1995-1996 — 1996-1997 — 1997-1998 — 1998-1999 — 1999-2000 — 2000-2001 — 2001-2002 — 2002-2003 — 2003-2004 — 2004-2005 — 2005-2006 — 2006-2007 — 2007-2008 — 2008-2009 — 2009-2010 — 2010-2011 — 2011-2012 — 2012-2013 — 2013-2014 — 2014-2015 — 2015-2016 — 2016-2017 — 2017-2018 — 2018-2019 — 2019-2020 — 2020-2021 — 2021-2022 — 2022-2023 — 2023-2024 — 2024-2025 — 2025-2026 — 2026-2027 — 2027-2028 — 2028-2029 — 2029-2030 — 2030-2031 — 2031-2032 — 2032-2033 — 2033-2034 — 2034-2035 — 2035-2036 — 2036-2037 — 2037-2038 — 2038-2039 — 2039-2040 — 2040-2041 — 2041-2042 — 2042-2043 — 2043-2044 — 2044-2045 — 2045-2046 — 2046-2047 — 2047-2048 — 2048-2049 — 2049-2050 — 2050-2051 — 2051-2052 — 2052-2053 — 2053-2054 — 2054-2055 — 2055-2056 — 2056-2057 — 2057-2058 — 2058-2059 — 2059-2060 — 2060-2061 — 2061-2062 — 2062-2063 — 2063-2064 — 2064-2065 — 2065-2066 — 2066-2067 — 2067-2068 — 2068-2069 — 2069-2070 — 2070-2071 — 2071-2072 — 2072-2073 — 2073-2074 — 2074-2075 — 2075-2076 — 2076-2077 — 2077-2078 — 2078-2079 — 2079-2080 — 2080-2081 — 2081-2082 — 2082-2083 — 2083-2084 — 2084-2085 — 2085-2086 — 2086-2087 — 2087-2088 — 2088-2089 — 2089-2090 — 2090-2091 — 2091-2092 — 2092-2093 — 2093-2094 — 2094-2095 — 2095-2096 — 2096-2097 — 2097-2098 — 2098-2099 — 2099-2100 — 2100-2101 — 2101-2102 — 2102-2103 — 2103-2104

Where a contract for the sale and delivery of 2,000 bars of stone contained a provision that in case of breach by the purchaser a sum as liquidated damages

money and one for the whole amount of the liquidated damages, but that his proper course was to sue for the difference only, which suit could properly be brought in the small Claims Court, being \$11,000 only. *MINERVA v. MINERAL* 5 BOM. & O. C. 147

tion of amount of proceeds of goods not accepted — drew a bill for £12,711 9 s against them on the defendant in favour of the Chartered Mercantile Bank. The bill was accepted by the defendant, and when presented for payment, was dishonoured. The bill was paid for honour by the attorney of the plaintiff. The goods arrived, and (the defendant having refused to pay the bill) were sold by the plaintiff, after notice to the defendant at his risk, and realized £11,655 15 s 4. The plaintiff refused to hold a survey on the goods unless the defendant paid the amount of the acceptance. The plaintiff

SMALL CAUSE COURT, PRESIDENCY

TOWNS—continued

1 JURISDICTION—continued.

forfeited by the E. I. Ry. Co. for delivery at Lucknow. The plaintiff applied under a 18 of Act XV of 1885 for leave to sue the defendant in the Calcutta Court of Small Causes. The Court refused to grant such leave, apparently on the ground that the defendant was living at a long distance from Calcutta, and that the suit was one for a small amount. *Prati* that, in reference to grant such leave, the Judge of the Small Cause Court had not

COLLETT & ASSOCIATES, I. L. R., 14 CALG, 528

5. Non-resident foreigner car.

trying on business by the manner in
Bombay—Presidency Town Small Cause Courts

Act (XV of 1882), s. 18—Where a foreigner who did not reside in Bombay carried on business there

by his minimum,—*Held* that, under s. 18 (1) of the

India, from which business he expects to derive substantially, by establishing his business in British India, and subject to the municipal law of British India. The learned judge said that the defendant's interest in the Court does not make him a resident in India, and that he is not a British subject who does not personally carry on business within the limits of British India. The learned judge said that the defendant is not a British subject who does not personally carry on business within the limits of British India. The learned judge said that the defendant is not a British subject who does not personally carry on business within the limits of British India.

the Courts of the country Giridhar Damodar I. R., 17 Bom., 662

6. — Splitting claim—Omission to

under a 34 of Act IX of 1850 that an abandonment of excess not stated in the summons is a splitting of the claim, and the Court has no jurisdiction to amend its record where there is no abandonment. CHANDER GHOSH CHANDER GHOSH BOURKE, O. C. 3: Cor., 83

defendant. Some of these naive firms, in respect of such transactions, became indebted to the plaintiff, and the defendant wrote to the plaintiff requesting them to sue such defaulting firms. The

SMALL CAUSE COURT, PRESIDENCY

TOWNS—continued.
TOWNS—continued.

within the jurisdiction and not actually resident therefore affect the powers conferred by s. 18 of Act XV of 1882. *WATTS & Co. v. BAITER* [I. L. R., 18 Cal., 372.]

(c) DAMAGES FOR BREACH OF CONTRACT.

16: Contract for shipment and delivery of goods—*Divisible contracts*—Construction of contract—*Separate suits*.—Where a

monthlyly shipments and the defendants refused to take delivery or pay for either of the shipments of the goods in accordance therewith; and it appeared that the total amount of the damages sustained by reason of the two breaches alleged, if added together, exceeded Rs. 2,000, whereas, if taken separately, they were less than that amount.—*Held* that on the true construction of the contract the plaintiff was entitled to bring two separate suits for the damages sustained in respect of each shipment, and that therefore the Presidency Small Cause Court had jurisdiction. *VOTKART v. SABJU SARKH* [I. L. R., 19 Mad., 304.]

(d) DECREE, SUIT ON.

17. Suit on decree of Small Cause Court—*Presidency Small Cause Courts Act, XV of 1882, ss. 1, 4, 94*.—A judgment-creditor in the Court of Small Causes had not before the 1st July 1882 the right to sue in that Court on his judgment. *MEHWANJI NOWROJI v. ASHABAI* [I. L. R., 8 Bom., 1.]

(e) IMMOVABLE PROPERTY.

18. Question of title—*Act IX of 1850, s. 91 (Act XV of 1882, s. 41)*.—Summons to show cause on what title occupier holds, without leave of owner.—Upon a summons issued under section 91 of Act IX of 1850 by the Judge of the Small Cause Court to the occupier of a house to show by what title he claims to hold or occupy the same or part thereof,—*Held* that the jurisdiction of the Small Cause Court was not ousted by the occupier appearing and showing as cause that which did not amount to an allegation of title in the occupier. *Held* also that the words in that section, "without leave of the owner," comprised a case where the original possession was with leave of the owner, but was afterwards withdrawn by his vendee, the subsequent owner. *DADABHAI HUSSANJI v. KTVAR-*

19. *Act IX of 1850, ss. 91-93*—*Difficult or doubtful question of title*.—Proof of the existence of a difficult or doubtful question as to the right to possession, *bond fide* raised by the person in possession, was held to be sufficient cause shown to justify a Presidency Small Cause Court in refusing a warrant of ejectment under

SMALL CAUSE COURT, PRESIDENCY

TOWNS—continued.

1. JURISDICTION—continued.

sued the defendant in the Small Cause Court for the amount of his acceptance, giving him credit for the proceeds of the goods, and abandoning the excess. *Held* that the plaintiffs were not entitled to do so, as the claim on the bill was not brought within the jurisdiction of that Court by payment or admitted set-off. *SHORTT v. ABDUL RAHIMAN* [6 Bom., O. C., 53.]

12. *Part payment*—*Suit for balance of account*.—The plaintiffs advanced Rs. 15,000 against the defendant's grain con-

signed to Hong-Kong, to be there sold on his account by the plaintiffs' agents. The plaintiffs subsequently gave credit to the defendant for Rs. 14,115-3-3, alleged to have been received by them as the proceeds of the sale, and sued him for the balance in the Bombay Small Cause Court, abandoning the excess so as to bring the claim within the Court's extended jurisdiction of Rs. 1,000. The defendant disputed the correctness of the account sales forwarded by the agents at Hong-Kong, and contended that the Court had no jurisdiction to try the case. The Judge, subject to the opinion of the High Court upon the facts as stated, struck the case out of the list for want of jurisdiction. *Held* that, as both the plaintiffs and the defendant were bound, by the nature of the transaction, to have the proceeds of the sale applied to satisfy the advance made by the plaintiffs to the defendant, the receipt by the plaintiffs of the amount, for which they gave credit in their particulars of demand, was in the nature of a part payment; and that the suit was therefore on a balance of account, and within the jurisdiction of the Court of Small Causes. *EWART, LATHAM & Co. v. MUHAMMAD SIDDIK* [4 Bom., O. C., 133.]

(b) ARMY ACT.

13. Stat. 44 & 45 Vict., c. 58, ss. 148, 151—*Act XV of 1882, s. 18*.—*Leave to sue*.—The jurisdiction given to Small Cause Courts by Act XV of 1882 is not affected by 44 & 45 Vict., c. 58, s. 151. *WATTS v. TAYLOR* [I. L. R., 13 Cal., 37.]

14. *Presidency Towns Small Cause Courts Act (XV of 1882)*.—*Army Act, 1881 (44 & 45 Vict., c. 58), s. 151*.—*Army (Annual) Act, 1888 (51 Vict., c. 4), s. 7*.—*Leave to sue*.—The jurisdiction given to Presidency Small Cause Courts by Act XV of 1882, s. 18, is not affected by 51 Vict., c. 4, s. 7. *WATTS & Co. v. BLACKBURN* [I. L. R., 13 Cal., 144.]

15. *Presidency Towns Small Cause Courts Act (XV of 1882), cl. 2, ss. 1, 18*.—*Army Act, 44 & 45 Vict., c. 58, sub-s. 1, s. 151*.—*51 Vict., c. 4, s. 7*.—The words of s. 1 of s. 151 of 51 Vict., c. 4, amending sub-s. 1 of s. 151 of 44 & 45 Vict., c. 58, are meant to restrict the words "within the jurisdiction, etc." found in sub-s. 1 of s. 151 to persons resident within it, so as to meet and exclude the case of persons casually

SMALL CAUSE COURT, PRESIDENCY

TOWNS—continued.

JURISDICTION—continued.

up the defence which he had, and that it ousted the jurisdiction of the Court of Small Causes to proceed further with the action—manuich — such defence raised a question of adverse title which, in suits under s 91 of Act IX, 1850, that Court had not jurisdiction to decide. LUCKMIDAS KINIAI v. MATHI CAVALI

I. L. R., 5 Bom, 285
Act XV of 1852. — Admission of tenancy
s 41 — Landlord and tenant

s 41 of the Small Cause Courts Act, XV of 1852. The defendant admitted the tenancy, but contended that he held under an unexpired lease for four years. The Judge of the Court of Small Causes was of opinion that a question of title was involved, and he dismissed the case on the ground that he had no jurisdiction to hear it. The plaintiff thereupon applied to the High Court under its extraordinary jurisdiction. *Held* that the case was within the jurisdiction of the Small Cause Court. DAVIDAS KANJIVANDAS v. TAYALAT APPALARAT

I. L. R., 10 Bom, 30
s 23. — Presided by
Tons Small Cause Court Act XV of 1852, ss 42 and 41 — Landlord and tenant—Suit to eject tenant

SMALL CAUSE COURT, PRESIDENCY

TOWNS—continued.

JURISDICTION—continued.

s 91 of Act IX of 1850. MATHANUD KAVI SATHI v. GEORGE
I. L. R., 4 Mad, 385
More assert on of a title to possession is not sufficient. MATHANUD KAVI SATHI v. GEORGE
I. L. R., 4 Mad, 385
I. L. R., 4 Mad, 385
ABOKIMOTOS

20
Title to immovable property—Act IX of 1850, ss 25, 91 — Act XXVI of 1864, s 2 — Practice—Leave to amend summons and plaint—In a suit brought under s 91 of Act IX of 1850, the Bombay Court of Small Causes had no jurisdiction to try a question of adverse title to the immovable property. The subject of the suit differed—If the suit were brought under s 25 of Act IX of 1850, and the value of the property in dispute did not exceed ₹1000 in a case involving a question of adverse title, the plaintiff should be allowed to amend the summons issued under s 91 of Act IX of 1850, so as to render it conformable with a claim under s 25 of Act XXVI of 1864. If the summons were issued in the mistaken form by the fault of the Clerk of the Court and not of the plaintiff. NOWLA SOLA v. BATA DUTTAVALI

I. L. R., 2 Bom, 81
Act IX of 1850

to deliver up possession of certain premises in his occupation belonging to the plaintiff. The plaintiff alleged that he had purchased the premises in question in 180 from one N, to whom the defendant sold on sale to N from the defendant, and never had manual possession of the premises occupied by him. But the plaintiff produced a writing of allotment, dated April 1878, acknowledged that he was occupying the premises in question as the plaintiff's tenant, and agreed to pay rent for the same at ₹120 a month. His defence was that the mortgage, the sale, and the writing of allotment were all merely colourable, executed for the purpose of defrauding his creditors and screening the property from execution; that no money had passed between the parties; that the defendant proposed to prove the above facts, and submit that that was raised a question of the jurisdiction of the Court by s 91. The Court, however, refused to receive the evidence, and held that it had jurisdiction. On reference to the High Court.—*Held* that the defendant was entitled to set

24
Trespass to immovable property—Act XV of 1852, ss 18, 19, 38, 46 — The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immovable property of which he proved he was in possession, the defendant contended that such a suit was one for the determination of a right to, or interest in, immovable property, and was therefore not maintainable in the Small Cause Court. *Held* that the Court had jurisdiction to

24
Trespass to immovable property—Act XV of 1852, ss 18, 19, 38, 46 — The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immovable property of which he proved he was in possession, the defendant contended that such a suit was one for the determination of a right to, or interest in, immovable property, and was therefore not maintainable in the Small Cause Court. *Held* that the Court had jurisdiction to

TOWNS—continued.
SMALL CAUSE COURT, PRESIDENCY

1. JURISDICTION—continued.

29. *Fixtures—Act IX of 1850, s. 85—Seizure of goods and chattels in execution of decree—Engine in flour-mill—Landlord and tenant.*—In a suit for damages for the removal of oil and flour mills and a steam-engine and boiler seized in execution of a decree of the Calcutta Small Cause Court.—*Held* that such things were fixtures, and not goods and chattels, within the meaning of s. 58 of Act IX of 1850, and therefore could not be seized in execution. The question whether fixtures are removable by a tenant as against his landlord has nothing to do with the question whether they are seizable in execution as goods and chattels. *MITRA v. BIRNDA-BUN*. I. L. R., 4 Cal., 946; 4 C. L. R., 460.

30. *Presidency Towns Small Cause Courts Act (XV of 1882), s. 28—Presidency Small Cause Court Rules of Practice, 49, 50, 51—Tiled huts—“For the purposes of execution;” Meaning of—Question of Title—Res judicata.*—In execution of a decree of the Calcutta Small Cause Court against A, the judgment-creditors attached certain tiled huts which had been mortgaged by A to the plaintiff. Plaintiff thereupon filed his claim on the mortgage in the Small Cause Court, but his claim was disallowed, that Court being of opinion that the mortgage was a collusive transaction and not genuine. The plaintiff then, brought this suit on his mortgage making the judgment-creditors as well as A defendants, and praying the judgment-creditors to be restrained from proceeding to a sale or other disposition of the mortgaged premises. A preliminary objection was taken that such a suit would not lie, and the suit was dismissed on that objection by the original Court. *Held* that the words of s. 28 (Act XV of 1882), “for the purposes of execution,” must mean for all purposes of execution, inclusive of the purposes of determining objections made to attachment. Tiled huts for all the purposes of execution are therefore movable property under that section. The Small Cause Court has full power and authority to determine the question of title under a mortgage over attached property, and that question is therefore *res judicata*. *DEMO NATH BATARYAL v. NUREN CHUNDER NUNDY*. I. L. R., 26 Cal., 778; 3 C. W. N., 590.

Held on appeal by the plaintiff reversing the above decision that tiled huts are immovable property. That the words “for the purpose of the execution of the decree” in s. 28 of the Presidency Small Cause Courts Act (XV of 1882) only mean that, as between the judgment-debtor and the judgment-creditor, property of this particular class (*i.e.*, tiled huts) shall, for the purposes of execution, be deemed to be movable. That section does not contemplate that Small Cause Courts should deal, in execution proceedings, with questions of title to or determine any right to or interest in tiled huts, at any rate as between the attaching creditor and the mortgagee of the judgment-debtor. *Small Cause Court, Tamluk v. Solomon Bhany v. Mohamed Khan, I. L. R., 18 Cal., 296*, distinguished. That the Small Cause Court has no jurisdiction to try. *CHAND*

TOWNS—continued.
SMALL CAUSE COURT, PRESIDENCY

1. JURISDICTION—continued.

entertain such a suit. *PARRY MOHUN GHOSAL v. HARBAN CHUNDER GANGOOLY*. I. L. R., 11 Cal., 261.

(f) INSOLVENCY.

25. *Madras Small Cause Court—Civil Procedure Code (Act XIV of 1882), ss. 8-3—Presidency Small Cause Courts, Act (XV of 1882), ss. 2, 28—The Madras Court of Small Causes has no jurisdiction in insolvency.* The second paragraph of s. 8 of the Code of Civil Procedure, 1882, which authorized the Local Government, by notification published in the Official Gazette, to extend to the Presidency Small Cause Court certain portions of the said Code, is repealed by the Presidency Small Cause Courts Act (s. 2 of Act XV of 1882), and consequently the notification of the Governor in Council of Fort St. George, dated 25th February 1872, conferring on the Madras Court of Small Causes jurisdiction in insolvency being repugnant to s. 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV of 1862 came into force. *IN RE WALTER*. I. L. R., 6 Mad., 430.

(g) LEGACY, SUIT FOR.

26. *Presidency Small Cause Courts Act (XV of 1882), s. 19—Suit for legacy—Equitable jurisdiction.*—A suit to recover a legacy brought in the Small Cause Court in which there is no allegation that the executors were in possession of sufficient assets to pay the legacy or that they had ever assented to the payment of the legacy is one for the administration of an estate and for an account: such a suit the Small Cause Court has no jurisdiction to try. *CHAND COOMAR BOXPERRIA v. KOTLASH CHUNDER GHOSAL*. I. L. R., 17 Cal., 387.

(h) MAINTENANCE, SUIT FOR.

27. *Presidency Small Cause Courts Act (XV of 1882), s. 18—Presidency Small Cause Courts, constituted under Act XV of 1882, are not debarred from entertaining suits for maintenance not based on contract or declaratory decree.* *POKTA v. MURUGAPPA*. I. L. R., 10 Mad., 114.

(i) MOVABLE PROPERTY.

28. *Tiled huts—Act IX of 1850, ss. 58, 59—Goods and chattels.*—Tiled huts were not “goods and chattels” within the meaning of s. 58, Act IX of 1850, and therefore could not be taken in execution under that section. Where tiled huts had been seized under a decree of the Small Cause Court, and a third party interpleaded under s. 58 of Act IX of 1850 and claimed the huts, *Held* that the Court, having no power to seize the huts, was right in dismissing the claim. *KATYERSAUD SINGH v. HOOTAS CHUND*. 10 B. L. R., 448; 20 W. R., 8.

SMALL CAUSE COURT, PRESIDENCY TOWNS—continued.

2. PRACTICE AND PROCEDURE—continued.

a cause once struck out under s. 42, though the order for striking off may have been duly recorded. In such a case it would be open to the defendant to apply to set aside such *ex-parte* order, and the sufficiency of the grounds of the application would be a question for the discretion of the Judge. *SHIB CHUNDER MUKERJEE v. KRISHN DAYAL OPADHYAIA* [I. L. R., 1 Cal., 476]

(b) LEAVE TO SUE.

39.—Practice as to granting leave to sue person out of jurisdiction—*Power of High Court to make rules as to Small Cause Court—Stat. 24 & 25 Vic., c. 104, s. 15—Civil Procedure Code (1882), s. 652—Presidency Towns Small Cause Courts Act (XV of 1882), ss. 6, 18, 33.*—In 1885 the High Court made a rule under the Presidency Small Cause Courts Act, s. 33, whereby it was declared that the granting leave to sue a defendant out of the jurisdiction under s. 18, cls. (a) and (c), of that Act was a non-judicial or quasi-judicial act within the meaning of that section, and might be done by the Registrar of the Court of Small Causes, Madras. *Held* that the rule was *ultra vires* and void. *RAJAM CHETTI v. SESHAYYA* [I. L. R., 18 Mad., 236]

(c) NEW TRIAL.

40.—Application for new trial—*Fresh evidence—Affidavits.*—A party who applies for a rule for a new trial and obtains it on particular materials, ought not to be allowed to go into fresh evidence with a view to strengthen his case when the rule comes on for hearing. If on hearing both parties the Court thinks further inquiry necessary, it can, of course, make such inquiry in such manner as seems most fit to it. When new trials are moved for on allegation of facts, it would be very convenient that a practice should be introduced of requiring the facts to be stated by affidavit, and in like manner the answer to be supported by affidavit. *MODHOO v. KONDHO v. MADHUBHAI SEWOTI* [15 W. R., 161]

41.—*Presidency Towns Small Cause Courts Act (XV of 1882) (amended by I of 1895), Ch. VI, ss. 69 and 70—Jurisdiction of the Presidency Small Cause Court to deliver his judgment contingent upon the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), but subsequently abandoned the exercise of such right before the question to be referred was formulated or a reference made.—Held* that the plaintiff was not thereby deprived of his remedies under Ch. VI of the Act, and could still make an application for a new trial. *Held* also that the meaning of s. 70 is that, in failing to give security, the party shall be deemed to have submitted to the judgment as final and conclusive within the meaning of s. 37 of Act I of 1895; that is to say, the judgment becomes final and conclusive, save as

SMALL CAUSE COURT, PRESIDENCY TOWNS—continued.

1. JURISDICTION—continued.

(n) TROVER.

36.—Action for detinue and trover—*Gift—Incomplete gift—Suit by executor to recover promissory notes on ground that the gift of them to defendant was incomplete—Presidency Towns Small Cause Courts Act (XV of 1882), s. 17.*—The plaintiff as executor of D sued the defendant in the Small Cause Court of Bombay to recover two Government promissory notes of the nominal value of Rs. 2,000, standing in the name of D. The defendant, who had been D's servant, alleged that the notes had been given to him by D as a reward for past services. The Court held that there was evidence (though unsatisfactory) of a gift by D to the defendant. It was then contended, on behalf of the plaintiff, that assuming there was evidence of a gift, such gift was incomplete, inasmuch as the notes had not been endorsed to the defendant, and that the defendant was not entitled to any aid from the Court to perfect the gift. The Judge held that the Court of Small Causes had no power to decree the return of the notes or payment of their value, and that, so far as the jurisdiction of that Court was concerned, the defendant had a right to retain the notes. *Held* by the High Court that the Court of Small Causes had jurisdiction to entertain the plaintiff's claim, on the ground that there was an incomplete gift of the notes to the defendant, and that it might on that ground pass a decree in favour of the plaintiff for the return of the notes or payment of the value. *KHURSEDI RUSTOMJI COLAH v. RUSTOMJI COVASSI BUCHA* [I. L. R., 12 Bom., 573]

2. PRACTICE AND PROCEDURE.

(a) GENERAL CASES.

The practice and procedure of the Presidency Small Cause Courts is so different now from what it was under the former Acts IX of 1850 and XXVI of 1864 that most of the cases decided under those Acts have become useless as precedents. The procedure is now governed by Act XV of 1882 by which a great portion of the Civil Procedure Code has been extended to these Courts.

37.—Dismissal of suit for want of jurisdiction—*Costs—Form of decree.*—Where a plea to the jurisdiction of the Small Cause Courts established under Act IX of 1850 is successful, the judgment ought to be one dismissing the suit. But whatever the form, it should be stated that the suit abates or is dismissed "for want of jurisdiction." In such a case the Court has power to award costs to the defendant. *HARON v. HARLEY* [I. L. R., 6 Cal., 418; 7 C. L. R., 237]

38.—Power to restore case struck off for default in appearance—*Act IX of 1850, s. 42.*—A Court of Small Causes, constituted under Act IX of 1850, could, during the same day and at the same sitting of the Court, *ex-parte* restore

2 PRACTICE AND PROCEDURE—continued
provided by Ch VI of Act XV of 1882 *Held*, therefore that the Small Cause Court had jurisdiction to entertain the application by the plaintiff for a new trial *Proctor Chunder Sen v. Tumsok Das*
I L R, 23 Cal, 907

43 Ground for new trial—

A new trial may be granted on the ground of want of jurisdiction in the Court though such ground was not formally raised or recorded at the original hearing *Chunder Cawn Dutt v. Enayut Cawseer Rimmer*
I L R, 8 Cal, 678 II C L R, 225

43. Question of error—Power to reverse decree—Where the ques-

tion is one of evidence, the judgment of the original Court can be reversed and new trial directed only when such judgment is manifestly against the weight of evidence *Sadaash Chander v. Kanayya, I L R, 19 Mad, 96*, followed *Sasook v. Huzar Das Buxer*
I L R, 24 Cal, 455 I C W N, 44

44 The Judge exercised the powers of an Appellate Court in setting aside the original decree, and exceeded the jurisdiction vested in them by a 38 of the Act such jurisdiction being a revisional jurisdiction only *Held* also that, where the question in one such judgment is manifestly against the weight of evidence the judgment of the original Court could be reversed, and a new trial directed only when

between Judges as to allowing new trial.—In a case of difference of opinion between two Judges upon the point as to whether there should be a new trial, no rule can be granted *Janday Skinner & Co v. Money*
14 W N, 312

48 Application to set aside ex parte decree—

Presidency Small Cause Courts Act (XI of 1882) s 37—Ex parte decree—b 37 of the Presidency Small Cause Courts Act (XI of 1882) does not apply to an ex parte decree passed by a Presidency Court of Small Cause falls within the

45 Difference of opinion be-

tween Judges as to allowing new trial.—In a case of difference of opinion between two Judges upon the point as to whether there should be a new trial, no rule can be granted *Janday Skinner & Co v. Money*
14 W N, 312

46 Das Buxer

I L R, 24 Cal, 455 I C W N, 44
I L R, 19 Mad, 96, followed *Sasook v. Huzar Das Buxer*
I L R, 24 Cal, 455 I C W N, 44

47 The Judge exercised the powers of an Appellate Court in setting aside the original decree, and exceeded the jurisdiction vested in them by a 38 of the Act such jurisdiction being a revisional jurisdiction only *Held* also that, where the question in one such judgment is manifestly against the weight of evidence the judgment of the original Court could be reversed, and a new trial directed only when

between Judges as to allowing new trial.—In a case of difference of opinion between two Judges upon the point as to whether there should be a new trial, no rule can be granted *Janday Skinner & Co v. Money*
14 W N, 312

48 Application to set aside ex parte decree—

Presidency Small Cause Courts Act (XI of 1882) s 37—Ex parte decree—b 37 of the Presidency Small Cause Courts Act (XI of 1882) does not apply to an ex parte decree passed by a Presidency Court of Small Cause falls within the

2 PRACTICE AND PROCEDURE—continued
terms of a 109 of the Code of Civil Procedure *Koskimal v. Lachmi Narayan*
I L R, 17 Bom, 607

43 Cause Court in a suit tried by him delivered judgment the conclusion that the judgment proceeded on a misappreciation of the evidence and reversed the decree *Held* by Collins, CJ and Srinivasa,

44 Powers of Full Bench—*Presidency Towns Small Cause Court Act (XV of 1882)*, s 37—*Presidency Towns Small Cause Court Amendment Act (I of 1885)* s 10—*Appeal—Act I of 1890* s 18 does not empower the Full Bench of the Presidency Court of Small Causes to entertain appeals of questions of fact against the decree of one of the Judges of the Court *Chander v. Huzar Das*
I L R, 21 Mad, 232

45 Second new trial? It is competent to the Judge of the Calcutta Small Cause Court to grant a second new trial of the same case *Purson Chunder Gopal v. Rajcoomar*
I L R, 365 19 W R, 208

46 Second application
I L R, 19 W R, 208

47 Difference of opinion be-

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SMALL CAUSE COURT, PRESIDENCY TOWNS—continued.

2 PRACTICE AND PROCEDURE—continued.

61 of the Small Cause Courts Act (XV of 1884) must do so before the Judge has delivered his judgment.

T. L. R., 16 Bom., 618
JUDGMENT ON APPEAL FROM SMALL CAUSE COURT—PRESIDENCY TOWNS—continued.

60. **11. T. L. R., 34 Calo, 129**
Defect in reference—No question of law referred—Presidency Small Cause Court.

the High Court, was bound to enter judgment for the defendants. **Yule & Co. v. MANOHAR HOSE**

11. T. R., 34 Calo, 129
Defect in reference—No question of law referred—Presidency Small Cause Court.

on the receipt of the copy of the judgment of the High Court, was bound to enter judgment for the defendants. **Yule & Co. v. MANOHAR HOSE**

11. T. R., 34 Calo, 129
Defect in reference—No question of law referred—Presidency Small Cause Court.

requires such reference. A Small Cause Court making a reference under a 69 should state the question of law or usage having the force of law, or the construction of a document upon which the opinion of the High Court is sought. **Quare—Whether**

incorporated with a 69 of the Presidency Small Cause Court Act. **BENODIA LATA ROY v. RIVER**

BREMA NAVIGATION COMPANY v. I. C. W. N., 143
Deposit of security for costs—**Act XVI of 1864, s. 8**—A case should not be referred to High Court by a Judge of the Small Cause Court until security has been deposited in accordance with s. 8, Act XVI of 1864, by the such party do not deposit the security "forthwith," it must be taken to submit to the judgment of the Small Cause Court. Where, however, a case was sent up without security for costs being deposited, and before the case was heard the plaintiffs tendered a sum

62. Deposit of security for costs—Act XVI of 1864, s. 8—A case should not be referred to High Court by a Judge of the Small Cause Court until security has been deposited in accordance with s. 8, Act XVI of 1864, by the such party do not deposit the security "forthwith," it must be taken to submit to the judgment of the Small Cause Court. Where, however, a case was sent up without security for costs being deposited, and before the case was heard the plaintiffs tendered a sum

63. 114 B. L. R., 180, 23 W. R., 136
FORNARO v. RAMSWART BOOKERS
be heard

1564, s. 5—Omission to deposit costs—Non appearance—Where a case had been referred from the Small Cause Court, for the opinion of the High Court, at the deposit

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SMALL CAUSE COURT, PRESIDENCY TOWNS—continued.

2 PRACTICE AND PROCEDURE—continued.

to an order that the plaintiffs should pay the costs of reference and other expenses connected therewith. **Dissent v. JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA**

114 B. L. R., 180, 23 W. R., 136
In a similar case, however, the reference was held not to be properly before the Court, and an application for costs by the defendant was refused. **RAMSWART v. FORNARO**

114 B. L. R., 180, 23 W. R., 136
These cases were under the old procedure. Under Act XV of 1882, if security is not deposited, the party against whom the contingent judgment has been given is to be taken to have submitted to it.

64. Case referred at request of

costs of a reference for the High Court cannot be dealt with separately, but must be dealt with when awarding the cost of the suit. They are, however, in the discretion of the Court, and need not necessarily follow the event of the suit. **NIJON v. MATHOOSA DASS DUMARI**

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TOWNS—continued.
SMALL CAUSE COURT, PRESIDENCY

2. PRACTICE AND PROCEDURE—continued.

not been signed and declared until the 17th December 1887, i.e., the day after the application had been made in Court; (2) that the affidavit in support of the application, as required by s. 38, had not been filed until two days after the application in Court; and (3) that the Court-fees, which by s. 71 of Act XV of 1882 should be paid prior to the application, had not been paid until the 20th December 1887, i.e., four days after the application. Held that the application for a re-hearing must be rejected. The application, although nominally made on the 16th December, was only provisionally received, and every objection to its reception which could have been taken on that day could be taken at the hearing. The subsequent compliance by the petitioner with the requirements of the Act could not place him in a better position than he occupied when the application was made. IN RE FAIRISSONDAS PURSHOTADAS

[I. L. R., 12 Bom., 408]

67.

Presidency

Small Cause Courts Act, s. 38—Case in which order for re-hearing granted on ground that decision of Small Cause Court was against weight of evidence

Practice.—On an application for a re-hearing by the High Court, under s. 38 of Act XV of 1882, of a suit already heard and decided by a Judge of the Small Cause Court, *Held* by the High Court that, the evidence being of a very conflicting character and not such as to justify a distinct opinion that the Judge of the Small Cause Court was wrong in his decision, the application for a re-hearing should be refused. S. 38 of Act XV of 1882 does not authorize the High Court to grant an order for a re-hearing where that Court merely feels that the evidence is doubtful without forming any opinion as to whether the conclusion arrived at by the Small Cause Court is a wrong one. The section requires that there should be such an opinion before granting the order, and such opinion should be a distinct opinion, and not merely what is termed an inclination of opinion. HASSARNOX VISAM v. BRITISH INDIA STEAM NAVIGATION COMPANY

[I. L. R., 12 Bom., 579]

68.

Presidency

Towns Small Cause Courts Act (XV of 1882), ss. 38, 71—Stamp—Petition insufficiently stamped—Deficiency of stamp, Power to make good, after period of limitation allowed for presentation of application.—On the 7th April, being the last day on which such application could be made under the provisions of s. 38 of the Presidency Small Cause Courts Act, an application was made to the High Court under that section for the re-hearing of a suit which had been dismissed by the Small Cause Court. The application was made by petition at the rising of the Court, and not being a regular motion day, the hearing of the matter was postponed till the 9th April. On that day, on the application being brought on, it appeared that the petition only bore a 7-rupee stamp instead of one of the much larger value required by s. 71 of the Act. It was contended on behalf of the petitioner that the deficiency could then be made up.

TOWNS—continued.
SMALL CAUSE COURT, PRESIDENCY

2. PRACTICE AND PROCEDURE—continued.

and that he was entitled to have the application heard. *Held* that this could not be done. The eight days allowed by s. 38 expired on the 7th April, and had the application been then considered, it could not have been received, but must have been rejected, as s. 71 requires the proper fee to be paid before the application can be received. Although the consideration of the application was deferred to the 9th April, that made no difference, as the eight days had expired before the petition was in such a condition that it could be received. NOBENDRANATH BOSE v. AMRANATH CHUNDRA ROY

[I. L. R., 18 Cal., 445]

69.

Miscellaneous or failure of justice

Withdrawal before judgment of request to refer case for the opinion of the High Court.—In a suit in the Court of Small Causes, in which questions of law and fact were raised, the plaintiffs at first asked the Judge to state a case for the opinion of the High Court under s. 69 of Act XV of 1882. The Judge was willing to do so, but the plaintiffs withdrew their request. The Judge thereupon delivered his judgment and dismissed the suit. The plaintiffs then applied to the High Court for a re-hearing under s. 38 of Act XV of 1882. It was contended that the Judge was wrong in his view of law as applicable to the facts. *Held* that, even if that were the case, there was no "miscarrriage or failure of justice" within the meaning of s. 38, and that the plaintiffs were not entitled to re-hearing. VASANTJI THAKURJI & Co. v. SOUTHERN MARATHA RAILWAY COMPANY

70.

Presidency

Dismissal for default—Remedy of plaintiff—Civil Procedure Code (1882), ss. 100, 102, 103—Appearance and non-appearance of parties—Appearance by counsel or pleader to obtain adjournment.—S. 38 of the Presidency Small Cause Courts Act (XV of 1882) does not preclude a plaintiff whose suit has been dismissed for default from applying under s. 103 of the Civil Procedure Code (Act XIV of 1882) to have the order of dismissal set aside. There is no inconsistency between the two sections. A plaintiff whose suit has been dismissed for default has two separate remedies under different enactments. If he chooses to apply for a new trial under s. 38, he must do so within eight days. If he proposes to apply for an order setting aside the dismissal under s. 103 of the Civil Procedure Code, he can do so within thirty days (Limitation Act XV of 1877, s. 11, art. 163). A suit and cross-suit between the same parties were on the board of a Judge of the Presidency Small Cause Court for hearing on the 23rd April 1898. On that day A, the counsel who was instructed for the defendants in the first suit and for the plaintiffs in the second, was unable to attend, and B, another counsel, held his brief and appeared on his behalf and applied for two months' adjournment of both suits. The manner of his clients was then in Court. B was unable to state what was the defence, if any, to the claim of the plaintiffs in the first suit. The adjournment was refused, and

SMALL CAUSE COURT, RANGOON

suit OLIVER v. LAVERZO [I L. R., 10 Calo., 678

SMUGGLING

See STOLEN PROPERTY—OFFENCES RE-
LATING TO . 18 W. R., Cr., 68
[18 W. R., Cr., 37

SNAKE-CHARMERS.

Death caused by—

See MURDER

[3 B. L. R., A Cr., 25; 13 W. R., Cr., 7
I. L. R., 5 Calo., 351; 4 C. L. R., 680

SOLDIER

See COMPROMISES ACT (11 of 1880),
§ 14 I. L. R., 3 All., 214

Residence of—

See JURISDICTION—CAUSES OF JURISDIC-
TION—DWARFING (ARTICLE ON BUREAU-
REVENUE, ON WORKING FOR GALT

[I. L. R., 1 All., 51

See SMALL CAUSE COURT, MOWTALE—
JURISDICTION—MILITARY MATTER

[5 W. R., 8 C. C. Ref., 21

14 Mad., 83

Army Act, 1881, s 144—Sub-Com-
missioner of Ordnance Department—Service of summons

See JURISDICTION—CAUSES OF JURISDIC-
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14 Mad., 83

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[I. L. R., 11 Mad., 475

SMALL CAUSE COURT, PRESIDENCY

TOWNS—concluded.

2. PRACTICE AND PROCEDURE—concluded.

as *ex parte* decrees, granted a rule for a new trial,
which was made absolute On appeal to the High Court,
the matter was referred to the High Court
and that under the circumstances the suits were to be
of 100

SMALL CAUSE COURT, RANGOON.

[I. L. R., 23 Bom., 414

1. Establishment of—Act XXI

Act XXI of 1865—Local Government—
jurisdiction, enacted by s 10 that, "save as in this
Court shall have or exercise any civil jurisdiction
whatsoever within the limits for the time being fixed as
aforesaid" Act XI of 1865, after declaring that the
word "Local Government" should denote "the
person authorized to administer the Executive Govern-

by the Local Government Act XI of 1865 did
not repeal s 10 of Act XXI of 1863 By notification
dated 1st September 1869 the Governor General
appointed a Judge of the Small Cause Court at
Rangoon, extended the provisions of Act III of 1864
to British Burma, and invested the Chief Commis-
sioner of British Burma with the powers conferred
on a Local Government by that Act By notification
of 2nd October 1869 the Governor General in

of 1865, were intended to include a Chief Com-
missioner Ko Shway Doon & Shway Gyar
[3 B. L. R., 196; 14 W. R., 331

2. Jurisdiction of—Foreign ship
—Suits by sailors for wages—Hofmann Small Cause
[I. L. R., 11 Mad., 475

SOLICITOR.
See CASES UNDER ATTORNEY.
See CASES UNDER ATTORNEY AND CLIENT.
See PRIVILEGED COMMUNICATION.
Duty of—Attorney and client—It is the duty of a solicitor who has once undertaken a cause to carry it to a conclusion. *IN RE A SOLICITOR*. 4 B. L. R., P. C., 29

This was an observation made in some remarks addressed by the Judicial Committee to a solicitor who, having obtained a final order in an appeal, had abstained from carrying that order to its proper termination. It was intimated subsequently that it was not intended to have any judicial authority, being only a personal admonition addressed to the solicitor and having reference to the peculiar circumstances of his case. 4 B. L. R., P. C., 51

Tien of, for costs.
See COSTS—COSTS OUT OF ESTATE.
[I. L. R., 10 Bom., 248

SOLITARY CONFINEMENT.
See SENTENCE—SOLITARY CONFINEMENT.
[3 B. L. R., A. C., 49
I. L. R., 6 All., 83

SOMAJ.
Breach of agreement to join—
See CONTRACT ACT, s. 28—ILLEGAL CONTRACTS—GENERALLY.
[2 B. L. R., S. N., 4
Exclusion from—
See JURISDICTION OF CIVIL COURT—SOLITARY CONFINEMENT. 3 B. L. R., A. C., 91

SOUTHAL PERGUNNAHS.
See SETTLEMENT OFFICER.
[6 C. L. R., 555
See TRANSFER OF CRIMINAL CASE—GENERAL CASES. I. L. R., 18 Cal., 247

Appeals in cases from—
See APPEAL—REGULATIONS—BENGAL REGULATION III OF 1872.
[6 C. L. R., 555
See APPEAL IN CRIMINAL CASES—ACTS—ACT XXXVII OF 1855. 17 W. R., 11
[I. L. R., 12 Cal., 536
See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[I. L. R., 8 Cal., 298
I. L. R., 10 Cal., 761

Trial of suit for land in—
See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.
[I. L. R., 4 Cal., 222
See SUBORDINATE JUDGE, JURISDICTION OF 5 C. L. R., 128

2. **Appeal from settlement proceedings—Notification of the Lieutenant-Governor of the 7th May 1872—Act XXXVII of 1855.**
s. 2—The officers appointed under s. 2 of Act XXXVII of 1855, and not the settlement officers as such, are the persons empowered to try such suits as are referred to by Regulation III of 1872, s. 5, and to certify issues to the Civil Courts under that section. The notification of the Lieutenant-Governor, dated the 7th May 1872, being still in force, the settlement officers have no power to deal with such cases. Where a settlement officer referred certain issues to a Deputy Commissioner as a Civil Court under Regulation III of 1872, s. 5, to be dealt with by him, and he gave a decision thereon and certified the same to the settlement officer, and it appeared that the Deputy Commissioner had previously been invested with the powers of a settlement officer, and the proceedings were subsequently returned to him for the settlement record to be amended.

SOUTHAL PERGUNNAHS SETTLEMENT REGULATION (V OF 1893).
s. 24.
See SOUTHAL PERGUNNAHS SETTLEMENT REGULATION, s. 6.
[I. L. R., 26 Cal., 238

SOUTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872).
ss. 3, 4—Act XXXVII of 1855, s. 2—*Bengal, N. W. P., and Assam Civil Courts Act (XII of 1857)—Suit exceeding £1,000 in value—Officer invested with power of a Civil Court—“Court.”*
—The effect of s. 2 of Act XXXVII of 1855 and s. 3 of Regulation III of 1872 is to make the general Code of Civil Procedure, including the provisions of the Code of Civil Procedure, applicable in the Southal Pergunnahs to suits exceeding £1,000 in value without any qualifications, provided that such suits are tried in the Courts established under the Civil Courts Act (XII of 1857). An officer in the Southal Pergunnahs invested by Local Government with the powers of a Civil Court under s. 4 of Regulation III of 1872 is a Court established under Act XII of 1857 within the meaning of s. 3 of the Regulation.
DUNBAR v. MARWARY v. RAJESHWAR DEO [I. L. R., 18 Cal., 133

1. **s. 5—Jurisdiction of Civil Court—Settlement proceedings.**
—During the time of the settlement in the Southal Pergunnahs, certain proceedings were instituted, with the permission of the settlement officer, by the plaintiff to get possession of certain land, and came before the Subordinate Judge, by whom they were treated as a regular suit. The decision was not pronounced until the settlement had been completed. *Heid* that s. 5 of Regulation III of 1872 did not apply, and that, under the circumstances, the proceedings must be taken to have been regularly commenced, and that they might be completed as proceedings in the ordinary Civil Court. *Heid*, further, that the proceedings were not necessarily irregular by reason of the fact that issues had not been framed under s. 5 of the Regulation. *SOMAJ v. DAS v. LIANUND SINGH*. 11 C. L. R., 30

**SOUTHAL PERGUNNAH SETTLE-
MENT REGULATION (III OF 1872).**

involved also the determination of "the rights of zamindars or other proprietors as between themselves."

[I. L. R., 18 Calo, 146
HAW CHUN SING v. BHARAT SING

2. "Proprietor." Meaning of—
Set for establishment of lakshmy title and
amendment of record-of rights—Jurisdiction of
Civil Court—Onus of proof—in proceedings for
settlement of rent and record of rights under the
Southern Pergunnahs Settlement Regulation (III of
1872), certain lands claimed by the plaintiffs as
lakshmy were ordered to be recorded as mal and assessed
with rent, the Commissioner of the Division stating
that the plaintiffs might, if they chose, bring a suit in
the Civil Court. The defendant (zamindar) obtained
an *ex-parte* decree for rent on the basis of the jumma-
bandi prepared in the said proceedings. In a suit
brought to establish the plaintiffs' lakshmy title and
for an order directing the record of rights and jumma-
bandi to be amended—Held that a lakshmydar is a
"proprietor" within the meaning of s. 26 of the
Regulation, and ss. 11 and 25 did not bar the jurisdic-
tion.

Haw Chuan
18 Calo, 146,
is the present case
alleged
lakshmy title
HAKMANAK
I. L. R., 22 Calo, 473
NANDA LAL LAL.

1. ss. 24, 25—Suit to set aside order
of settlement officer—Non-publication of record-of-
rights—Where, in December 1884, a suit was
brought to set aside an order of the settlement officer
under Regulation III of 1872, made in December
1875, after disposing of the plaintiff's objections to
the defendant's title, and it was found that no
record of rights had been published in accordance
with s. 24 of the Regulation—Held the suit was not
barred under s. 25 as not having been brought within
three years from the date of the order. The jumma-
bandi referred to in that section must be one subse-
quent to or not preceding the publication of the record-
of rights. HAW MANIN SING v. HAW HONNYU
CHUCKKARAVUTY
I. L. R., 18 Calo, 345

2. Suit to set aside order of
settlement officer—Non-publication of record-of-
rights—Where a suit was brought to establish, by avoiding
the instrument under which he held, that the deten-

1. ss. 11, 25—Suit regarding matter
decided by Settlement Court—Settlement officer,
jurisdiction of Civil Court—Right of
suit to set aside settlement and for possession.
—Where a suit was brought to establish, by avoiding
the instrument under which he held, that the deten-

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decided by Settlement Court—Settlement officer,
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decided by Settlement Court—Settlement officer,
jurisdiction of Civil Court—Right of
suit to set aside settlement and for possession.
—Where a suit was brought to establish, by avoiding
the instrument under which he held, that the deten-

Commissioner had no jurisdiction to try the issues
sent him or deal with the case, but that, inasmuch as
he was vested with the powers of a settlement officer,

Held also that, treating the action of the Deputy
Commissioner as that of a settlement officer, the
High Court had no jurisdiction to hear the appeal.

TARINI PRASAD MISHRA v. MANABU CHOWDHRY
[I. L. R., 7 Calo, 376
DEN CHOWDHRY
8 C. L. R., 548

8 C. L. R., 548
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[I. L. R., 7 Calo, 376

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[1. L. R., 16 Cal., 753			
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[10 B. L. R., 155, 156 note			

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—concluded.

behalf of the defendant that such publication was not essential, but that it was open to the settlement officer to publish the record in such manner as might be convenient. *Held* that posting the record conspicuously in the village is an essential part of the publication, and that the suit was not barred by limitation. It was further contended that the onus of proving the tenure to be dur-mokurari, which had been thrown on the defendant, had been wrongly so thrown on him, as the suit was substantially one to set aside a decree. *Held* that the onus of proving the validity and propriety of the settlement-proceedings upon which he relied had been properly thrown on the defendant. NADAR CHAND SINGH v. CHUN-DEB SIKHUR SARDU . I. L. R., 15 Cal., 765

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8719

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1. Law applicable to special appeals—*Civil Procedure Code*, 1877, ss 534, 531

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2 Order improperly adding plaintiffs to suit—*Civil Procedure Code*, 1882, s 531

—An appeal lies, under s 531 of the *Civil Procedure Code*, from an order improperly adding a person as a plaintiff in a suit. GOODALE SANOO I

3. Order for attachment for contempt—*Civil Procedure Code*, 1882, s 531—

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4. Decision of Political Agent in a regular appeal—*Political Agent of South*

em Maratha Country—A special appeal lies from the decision of the Political Agent of the Southern

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6 B. L. R., 16 Bom., 408

7. Order as to compensation for land—*Land Acquisition Act (X of 1870)*, ss 15, 39

—Dispute as to right to compensation—Where a

Act is not "an order as to a fine" within the mean

ing of s 805 of Act VIII of 1859 (with which s 889

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I. ORDERS SUBJECT OR NOT TO APPEAL

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8. Order as to execution of

9. Order as to execution of

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12. Regular appeal heard ex-

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13 B. L. R., A C, 110, 10 W. R., 450

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parte—A special appeal lies from a regular appeal

heard ex-parte. TARA CHAND GHOSH I AMAND

CHANDRA CHOWDHURY

16. Regular appeal heard ex-

parte—A special appeal lies from a regular appeal

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	8738	(u) TAX
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	8777	(i) Parties
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—concluded.

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—Sue against—

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1. ORDERS SUBJECT OR NOT TO APPEAL
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2. Order improperly adding
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come within Ch. XLII or ss 588 and 591 of Act X

3. Law applicable to special
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second appeals to the High Court must either

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5. Decision of Political Agent
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ern Maratha Country—A special appeal lies from
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[I. L. R., 16 Bom, 408

Stamp Act—Civil Procedure Code, 1877, s 588—
Act VIII of 1859, s 585—A decision of a Judge
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Act is not "an order as to a fine" within the mean-
ing of s 585 of Act VIII of 1859 (which with s 588
of Act X of 1877 corresponds) s 585 was not
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—Dispute as to right to compensation—Where a
dispute as to the right of one of the claimants to
certain compensation awarded under the provisions of

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1. ORDERS SUBJECT OR NOT TO APPEAL
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Maratha Country passed in regular appeal. NIMWA
v. FAKIRATRA
6 Bom, A C, 75

5. Decision of the District
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[I. L. R., 16 Bom, 408

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aside on the ground of material irregularity. *Gopi Koeni v. Gopi Lal*. I. L. R., 21 Cal., 799

37.

Order made on application to set aside sale in execution where the auction-purchaser is a benamidar for judgment-debtor—*Civil Procedure Code (1852)*, ss. 241 and 311—*Bengal Tenancy Act*, s. 178.—Where the auction-purchaser is a benamidar for the judgment-debtor, in an application to set aside a sale under ss. 173 of the Bengal Tenancy Act and 311 of the Code of Civil Procedure, a second appeal lies to the High Court from the order made on the application, as the application is one under s. 244 of the Code. *Chand Mookes Das v. Santu Mookes Das*. I. L. R., 24 Cal., 707

I. L. R., 24 Cal., 707
I. C. W. N., 534

38.

Order made under s. 311 of Civil Procedure Code (1852) on application to set aside sale.—No second appeal lies from an order made under s. 311 of the Civil Procedure Code. *Narayan v. Rasturman*

I. L. R., 23 Bom., 531

39.

Order refusing to set aside a sale—*Appeal from an order remanding a case—Code of Civil Procedure (1852)*, s. 558, cl. 16 and 28, and s. 562.—Though orders under s. 563 of the Code of Civil Procedure are appealable under cl. 28 of s. 558, yet the provisions of the latter section are subject to its last paragraph, which says that orders passed under this section shall be final; and therefore no second appeal lies from an order passed under s. 558, c. 16, notwithstanding that it is an order passed by the lower Appellate Court remanding the case under s. 562, inasmuch as the order was made in a case which was itself an appeal from an order allowed by s. 558 of the Code. *Mathura Nath Ghose v. Nobin Chandra Kundu Biswas*

I. L. R., 24 Cal., 774
I. C. W. N., 674

40.

Order refusing to set aside sale in execution of decree—*Civil Procedure Code (1852)*, ss. 2 and 558.—A judgment-debtor, whose property had been sold in execution of a decree and purchased by the decree-holder, applied that the sale be set aside on the ground that the person at whose instance execution had proceeded had been improperly brought on to the record. The application was rejected by the Court of first instance, and an appeal by the applicant was dismissed. *Held*, that no second appeal lay to the High Court. *Dar Vanyagam Pillai v. Rangasami Ayyar*

I. L. R., 19 Mad., 29

41.

Civil Procedure Code (1882), ss. 244, 311, and 583—*Decree—Fraud—Question relating to the execution of the decree between parties to the suit—Auction-purchaser a third party*.—An application was made by the judgment-debtor against the decree-holder and the auction-purchaser, who was a third party, to have a sale set

SPECIAL OR SECOND APPEAL

—continued.

1. ORDERS SUBJECT OR NOT TO APPEAL

—continued.

aside, on the ground of irregularity in publishing or conducting the sale, as also on the ground of fraud. The Court of first instance rejected the application, and refused to set aside the sale. On appeal to the Subordinate Judge, he reversed the decision of the first Court. On a second appeal to the High Court by the auction-purchaser, an objection was taken that no second appeal lay at his instance. *Held*, that, inasmuch as the application was under s. 244 of the Civil Procedure Code, a second appeal would lie. The question of a right to a second appeal does not turn upon who may happen to be the appellant, but upon whether or not the case is one within s. 244 of the Code. *Hira Lal Ghose v. Chandra Kant Ghose*

I. L. R., 26 Cal., 539
I. L. R., 26 Cal., 524

See Bhoba Mohan Pat v. Nanda Lal Deb and Mori Lal Chakravarty v. Rastor Chandra Baidar. I. L. R., 26 Cal., 326 note

42.

Civil Procedure Code, 1882, ss. 244, 311—*Application to set aside sale on ground of fraud*.—Where a judgment-debtor applies to have an execution-sale set aside and alleges circumstances which, if found in his favour, would amount to fraud on the part of the decree-holder or auction-purchaser, the case comes under s. 244 of the Civil Procedure Code, and a second appeal lies therein. *Nimai Chand Kant v. Dano Nath Kant*

I. C. W. N., 691

43.

Order of remand made under s. 562 of Civil Procedure Code—*Order made in an appeal under s. 558 from an order for attachment under s. 485*.—*Held*, that no appeal would lie from an order of remand made under s. 562 of the Code of Civil Procedure when such order was itself made in an appeal under s. 558 from an order under s. 485 of the Code. *Mathura Nath Ghose v. Nobin Chandra Kundu Biswas*, I. L. R., 24 Cal., 774, followed. *Jhandya Lal v. Sarman Lal*

I. L. R., 21 All., 201

44.

Order passed by Appellate Court on appeal from order granting a review of judgment—*Civil Procedure Code (Act XI of 1882)*, ss. 624, 626, 629.—No second appeal lies against an order passed under s. 629 of the Civil Procedure Code. An application dismissing his suit as against all the defendants, which application was granted. Against that order the defendants appealed, and the lower Appellate Court confirmed the lower Court's order, granting the review as against one of the defendants, but set it aside as against the other defendants. *Held*, that no second appeal lay against such order. *Thay Singh v. Chundru Singh*

I. L. R., 11 Cal., 296
I. L. R., 16 Cal., 788

See Avkhor Churn Monny v. Shamant Loochin Monny and cases there cited.

SPECIAL OR SECOND APPEAL

1 ORDERS SUBJECT OR NOT TO APPEAL

—continued.

50. — Order on application for reversal of suit—*Act LIII of 1860, s. 2—Civil Procedure Code, 1859, s. 378*—The Zillah Judge reversed a decree in the plaintiff's favour on the ground that the suit was barred by the period of

two years from that day, and by s. 11 that suits or appeals dismissed on the ground that they had not been commenced within the period prescribed by the

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was final, but being for the revival of a suit under the provisions of the latter law, his order was the subject of an appeal. *BUKHARABAH MUNDUR v. PUDOLACHUR KOT*

[March, 38 W. R., F. B., 11
1 Ind Jur, O. S., 5, 1 May, 80]

52. — Order in suit entertained without jurisdiction—*Subsequent Act passed*

Court in suits similar to the one in question A second appeal to the High Court in that suit was filed on the 18th of November 1886. *Held* that no appeal lay. *HURROSHABAI DABAI, BROODHABAI DAS MAMAT*

An Act was subsequently passed declaring that all suits which had been similarly entertained without jurisdiction should be deemed to have been duly preferred. The plaintiff, after the passing of the Act, filed a special appeal, in which he urged that the decision of the Court of first instance was no longer illegal, and that the suit should be heard by the lower Appellate Court on its merits. *Held* (per *TURNER J.*) that, as at the time the lower Appellate Court gave the decision from which the special appeal was presented the Act had not been passed, it must be held that its judgment was correct, and that a new law, passed since the decision, could not make that decision wrong, which was, and still is, with reference to the law then in force, right, and that

SPECIAL OR SECOND APPEAL

1 ORDERS SUBJECT OR NOT TO APPEAL

—continued.

45. — Order on application to re-view—*Civil Procedure Code, 1852, s. 629—Appeal from decree as amended—Fracture—A second*

BRITA NATH . I. L. R., 13 Bom., 486

—*Order on appeal* affirming

an appeal under s. 629 from an order granting an application for review of judgment. *GORAI DAS v. ALTA KHAN*

ing a review of judgment. *KAZI CHUDRAH NUR KHAN v. SAIBEGAN*

KHAN BAK v. MAHOMED GORAI

of appeal to the High Court whether the order was strictly referable to s. 160 of that Act or not. In

MR. GADABAH PARSAD NARAYAN SINGH

S. C. GADABAH PARSAD NARAYAN SINGH

JUDHO NARAYAN

48 — Order of a District Court

There is no provision in the Act for a second appeal in any case. *SARMA KAO v. PATA NANDI PATAI*

I. L. R., 17 Mad., 167

SPECIAL OR SECOND APPEAL
—continued.
1. ORDERS SUBJECT OR NOT TO APPEAL

Code, 1882, ss. 561, 584.—A preliminary objection taken by a respondent that no second appeal lies from so much of the decree of a Subordinate Judge as disallowed objections filed by the appellant under s. 561 of the Code of Civil Procedure was held to be without weight. *GANAPATI v. SITHABAYA*
[I. T. R., 10 Mad., 292]

58. —Decision as to title to land—
Appeal to High Court from decision of District Court on appeal—*Madras Forest Act, s. 10.*—An appeal lies to the High Court from a decision of a District Court passed under s. 10 of the Madras Forest Act, 1882, on appeal from the decision of a Forest Settlement Officer. *KANARAY v. SORAY*
[I. T. R., 11 Mad., 309]

59. —Arbitration—*Civil Procedure Code, ss. 521, 522, and 582.*—Revocation of sub-mission—*Appellate decree in accordance with award.*—By reason of s. 582 of the Civil Procedure Code, where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of first appeal, holding that the award was not open to objection upon the grounds mentioned in s. 521, passes a decree strictly in accordance with the award, such appellate decree is entitled to the same finality as the first Court's decree would have been under the last paragraph of s. 522, and cannot be made the subject of second appeal. *Puresh Nath Day v. Nabin Chunder Dutt, 12 W. R., 93, and Rughoober Dyal v. Maina Koor, 12 C. T. R., 564.* dissented from. *NAVANG SINGH v. SADAPAL SINGH*
[I. T. R., 10 All., 8]

60. —Order reviewing and setting aside order rejecting objection to execution of decree—*Civil Procedure Code, s. 629.*—When a Munsif sets aside on review an order rejecting an objection to the execution of a certain decree, and the District Court on appeal refuses to interfere, —*Held* that no second appeal lay to the High Court. *PAPAYA v. CHRAMAYYA*
[I. T. R., 12 Mad., 125]

61. —Order of Special Judge as to settlement of rents—*Superintendence of High Court—Bengal Tenancy Act (VIII of 1885), ss. 104, cl. 2, 105, 106, 108.*—Rule 33 of the Rules made under the Act—*Jurisdiction—Record of right—Civil Procedure Code (Act XIV of 1883), ss. 108, 622.*—The High Court has no jurisdiction either to entertain a second appeal from, or to interfere under s. 622 of the Code of Civil Procedure with, an order of a Special Judge in regard to settlement of rents. *SHEWABAH KORE v. NIBPAT ROY*
[I. T. R., 16 Cal., 596]

62. —*Decision of Settlement Officer—Settlement of rent under Bengal Tenancy Act (VIII of 1885), s. 104.*—No second appeal lies to the High Court from a decision of a Revenue officer settling rents under s. 104 of the

SPECIAL OR SECOND APPEAL
—continued.
1. ORDERS SUBJECT OR NOT TO APPEAL

the appeal should be dismissed. *Held (per SEANKIE, J.)* that a special appeal would lie, the decision being contrary to a law in force at the time that the special appeal was instituted, which law the Court was bound to enforce. *BURDO v. LUCHKUN*
[5 N. W., 106]

53. —Order in execution of a decree.—Under Act VIII of 1859, there was no special appeal from orders passed in execution of a decree. *ANONYMOUS* . 1 Ind. Jur., O. S., 50
But there is now since the passing of Act XXIII of 1861.

See MANOJED HOSSAIN v. AZUL ALTY
[B. L. R., Sup. Vol., Ap., 1: Marsh., 296
W. R., E. B., 83: 2 Hay, 293
BAGWAT v. NIZAMUDDIN . 6 Bom., A. C., 205
VIRASATY MUDALI v. MANOJEDY AKKAT.
VIRKATA BAKKISHNA CHETTI v. VIRJAGAVANNA VALAJI KRISHNA GOPATHE . 4 Mad., 32
1861, ss. 11 and 44—*Act VIII of 1859, ss. 237, 269, and 372.*—A special appeal will lie from an order passed on appeal in relation to the execution of a decree. *MANOJED HOSSAIN v. AZUL ALTY*
[B. L. R., Sup. Vol., Ap., 1: Marsh., 296
W. R., E. B., 83: 2 Hay, 293
Decree in suit under s. 53, Act XX of 1866.—
No second appeal lay to the High Court against an order passed on an application for execution of a decree made in a suit under s. 53 of Act XX of 1866. *Quere*—Whether an appeal lay at all against such an order passed in proceedings taken in execution of such a decree. *SRI BUTLOV BHATTACHARYA v. BAHUBHAI CHATTOPADHYAY*
[I. T. R., 11 Cal., 169]

56. —*Civil Procedure Code, 1877, s. 244—Registration Act, 1866, s. 53.*—An application was made to a District Munsif on the 16th July 1877 to issue execution on a decree dated 6th November 1869, obtained on a bond registered under s. 53 of the Registration Act of 1866. He made an order refusing execution, the decree being one passed, not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by art. 166, sch. II, Act IX of 1871. On appeal the Subordinate Judge reversed the order of the Munsif, holding that art. 167, sch. II of Act IX of 1871, applied. On application to the High Court, —*Held* that, as s. 588 of Act X of 1877 provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay. *SURYA PRASAKA RAY v. VAISYA SAMYASI RAY*
[I. T. R., 1 Mad., 401
Appeal from portion of decree disallowing objection—*Civil Procedure*

SPECIAL OR SECOND APPEAL

1. ORDERS SUBJECT OR NOT TO APPEAL

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SPECIAL OR SECOND APPEAL

1. ORDERS SUBJECT OR NOT TO APPEAL

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Hengal Tenancy Act

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I. I. R., 26 Calo, 248

[3 C. W. N., 137

Rent suit—Hengal

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to the Special Judge on appeal from the settlement officer—Hengal Tenancy Act, CH X, ss 104, cl 2, 106, 107, 108, cl 2—Dispute as to entries in record-of-rights—Question as to status of raiyats—Procedure Code, s 622—Order CH X of the Bengal Tenancy Act, there in to be (1) a framing of the record of rights, (2) a draft publication for a period of one month, during which time objections

SPECIAL OR SECOND APPEAL
—continued.
I. ORDERS SUBJECT OR NOT TO APPEAL

Calc., 462, distinguished. *NARONAN JAYA v. HANI CHANAY PHAKYAKOR* I. L. R., 26 Calc., 556

*Act (VIII of 1885), s. 153—Execution of rent decrees valued at less than Rs 100—Civil Procedure Code (Act XIV of 1882), s. 617—Where the original suit is a suit for rent valued at less than Rs 100 and the decree or order made in it does not decide a question relating to title to land for some interest in hand as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant, no second appeal will lie in respect of an order made in execution proceedings relating thereto. *SHAYYA CHAKKAR MITTAR v. DEBENDRA NATH MUKHERJEE**

I. L. R., 27 Calc., 484
4 C. W. N., 269

*Act (VIII of 1885), s. 153—Determination of annual rent payable—Rate of rent—Where the lower Appellate Court, in deciding the question as to the amount of rent annually payable, found that the plaintiff had failed to prove the rate of rent claimed by him, and therefore gave him a decree at the rate admitted by the defendant,—*Held* that this was not a determination of the annual rent payable, and therefore no second appeal lay. *NARAYAN v. NANDA DEBATA**

74. *Suit for rent—Bengal Tenancy Act (VIII of 1885), ss. 3, cl. (5), and 153—Interest on rent is not rent within the meaning of s. 3, cl. (5), of the Bengal Tenancy Act. Therefore no second appeal would lie in a case where the question is one relating to rate of interest and the value of the subject-matter of the suit is less than Rs 100. *KORLAH CHANDRA DE v. TIBAK NATH MANDAL**

I. L. R., 25 Calc., 571 note

75. *Bengal Tenancy Act (VIII of 1885), s. 153—Rent payable by the tenant not in issue in the appeal—Under s. 153 of the Bengal Tenancy Act, a second appeal lies in a rent suit whenever the decree of the Appellate Court has decided a question of the amount of rent annually payable by a tenant; it is not necessary that the amount of rent payable by the tenant should be a matter in issue in the second appeal. *RAT CHURN GHOSE v. KURUP MOHAN DUTTA CHAUDHURI**

In the same case on review,—*Held* the question relating to instalments, though it affects the question of interest on the rent, is not a question of "the amount of rent annually payable" within the meaning of s. 153 of the Bengal Tenancy Act. Therefore no second appeal would lie in a case where the value of the suit is less than Rs 100, even if there is a question as to the instalment of rent. *KOYLASH CHANDRA DE v. TARAK NATH MANDAL*, I. L. R., 25

SPECIAL OR SECOND APPEAL
—continued.
I. ORDERS SUBJECT OR NOT TO APPEAL

—continued.
MAHANT v. ALOTA NATH, I. L. R., 21 Calc., 776, referred to. ANAND NATH PANDA v. SHRI CHANDRA MUKHERJEE I. L. R., 22 Calc., 477

80. *Decision of—Revenue officer, Decision of—Bengal Tenancy Act (VIII of 1885), ss. 105, 106, and 108 (3)—Rescript of rights, Dispute prior to completion of—Dispute about proposed entry or omission in the record.—The respondent, in the course of proceedings for the record of rights in the village, of which he was the landlord, applied for the settlement of fair rents. The appellant claimed to be a raiyat holding at a fixed rent. The respondent denied the validity of the claim. This dispute gave rise to a case between them which was decided by the revenue officer against the appellant, who then appealed to the Special Judge, with the result that the decision on that question was confirmed. At the time of the revenue officer's decision no record of rights had been completed under s. 105 (1) of the Bengal Tenancy Act. (In appeal to the High Court, the respondent took the preliminary objection that no appeal lay under s. 108 (4), as the case was not one under s. 106. *Held* that the decision of the revenue officer was a decision in a proceeding under s. 106 of the Bengal Tenancy Act, and that a second appeal lay from the decision of the Special Judge to the High Court. *Gopi Nath Mahant v. Alota NATH, I. L. R., 21 Calc., 776, and Anand Nath PANDA v. Shri Chander Mukherjee, I. L. R., 22 Calc., 477, so far as they decide that a second appeal would not lie in such a case, overruled.**

DEBBO KAZI v. NOBIS KISSORI CHOWDHURAN
I. L. R., 24 Calc., 462
I. C. W. N., 234

70. *Act (VIII of 1895), ss. 104, 106, 108—Special Judge under the Bengal Tenancy Act—Question of standard of measurement, area of lands, and liability to pay rent—Decision of the Special Judge.—Under the terms of s. 108 of the Bengal Tenancy Act (VIII of 1895), a second appeal lies from the decision of the Special Judge on questions with regard to the prevailing standard of measurement, area of lands in the possession of tenants, and the liability of the tenants to pay rent on account of any excess lands in their possession. *MATTHEWA MOHUN LAHARI v. UJA SUNDARI DEBI**

I. L. R., 25 Calc., 34

71. *Act (VIII of 1885), ss. 105, 106, 108—Order of Special Judge as to standard of measurement of lands.—An order of the Special Judge as to the length of the standard of measurement to be used in measuring certain lands is not a decision in a case under s. 106 of the Bengal Tenancy Act, and therefore no second appeal lies from such an order to the High Court. *MAHURNA MOHUN LAHARI v. UMA SUNDARI DEBI, I. L. R., 25 Calc., 34, and DENGU KAZI v. NOBIS KISSORI CHOWDHURAN, I. L. R., 24**

SPECIAL OR SECOND APPEAL —continued
1. ORDERS SUBJECT OR NOT TO APPEAL

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ORDERS SUBJECT OR NOT TO APPEAL

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CONFIDENTIAL
SARAH DORIS ALDRIDGE
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2 RIGHT OF APPEAL

79 ————— Appeal by one defendant against another — A special appeal cannot be en

17 W. R. 378

80 ————— Right of parties not appeal.

appeal — articles who did not appeal from the decision of the first Court cannot bring a special appeal against the decision of the lower Appellate Court on the ground that the decision of the first Court prejudiced their rights. *ROOBYO CHUNDRA DAS* [W R, 1864, Act X, 87]

81 ————— Right of defendant not appearing as respondent on appeal — A de

defendant who obtains a judgment in his favor in the
 Court of first instance, and who on appeal by the
 plaintiff does not appear at the hearing of the ap-
 peal or present a petition for a rehearing may under
 Act X of 1877, present a second appeal against the
 decree of the lower Appellate Court. See *Parsons*
 11 R. 2 Mad. 76.

82 — Party dismissed with find-
ings in judgment—*Civil Procedure Code (Act*
of 1877), ss 540 and 654—An appellant who has
obtained a decree setting aside the decision of the
Court of first instance is not entitled to a further
appeal to the High Court, on the ground that he is
dissatisfied with some of the findings recorded in the
judgment of the lower Appellate Court, an appeal
from an appellate decree under s 684 being strictly
restricted to matters contained in the decree alone.
Koriam Chundor Koorari v. Bay Latt Nag
[1 L R, 6 Cal, 206]

3 ADMISION OR SUMMARY REJECTION
OF APPEAL

83 —————Summary rejection of memo.
 random—Civil Procedure Code, ss 54, 543, 551
 552, 584—Reasons for rejection—Per Lord, C J

—A judge to whom a memorandum of appeal from an appellate decree is presented for admission is not to consider whether any of the grounds mentioned in s 58 of the Code of Civil Procedure in fact exist and apply to the case before him and, if they do not, to reject the memorandum of appeal summarily. s. 58 of the Code of Civil Procedure applies to appeals which have been admitted. *See AIR 1947, J. 1*—When a memorandum of appeal is summarily rejected, whether under s 53 or under s 58 read with s 58 of the Code of Civil Procedure, the reasons for such rejection should be recorded *sed quare* whether or not it appears from the memorandum of appeal unless it appears that a second appeal does not lie, taken by itself that a second appeal does not lie.

SPECIAL OR SECOND APPEAL

—NO. 111122

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3 C W. N., 297

76. —Appeal from District Judge —Proceeding to be adopted when a District Court

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ated the others in a subordinate court to discover their distributive share under Mohammedan law. The property to be divided was more than Rs 600 in value, but the share claimed by the plaintiffs was less. The subordinate judge passed a decree against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation to the High Court. The High Court affirmed a second appeal to the High Court.

Court against the decision of the District Judge, and also presented a petition praying for the revocation of the same.

tion of his proceedings under the Civil Procedure Code, s. 62? Held that neither a second appeal (which did not lie in such a case) nor a petition under the Civil Procedure Code s. 6-2 was the appropriate proceeding to be adopted by the appellants but an appeal as from an order made under the Civil Procedure Code ss. 57, 58, which would be under s. 58, cl (c), and 58. The error of the appellants being one of form merely, the Court amended the second appeal as an appeal from an order of the District Court, and directed the District Judge to receive and dispose of the appeal from the Subordinate Judge. KANWARJI, J. AGOSTINI

[I. T. R., 14 Mad., 462]

47. —Suits under Chota Nagpore Landlord and Tenant Procedure Act (Bengal Act I of 1879), as 37, 1871—*Arrears of rent and ejectment, Suit for*—in suits instituted under Bengal Act I of 1879 for arrears of rent and ejectment on account of the non payment of arrears of rent a second appeal lies to the High Court, this class of cases not being within the provision of s. 137 of the same Act *Ramjan Khan v. Ramjan Chamar* I L R, 10 Calo, 89

78. —Suit for arrears of rent—

69 11 C T R, 480 and *Pring Nath Sah Das v. Murr Vanda*, I L R 24 Calo 249, so far as they held that a second appeal did lie in cases of this nature arising under Bengal Act I of 1879, were wrongly decided *Kharud Mantro v. Bodhu Mantro* I L R, 27 Calo, 604

14 C W N, 333

SPECIAL OR SECOND APPEAL.

4. SMALL CAUSE COURT SUITS—continued.

BRIONUK SINGH v. NAGESHAR NATH
[I. L. R., 2 All., 112.]

88. *Act XXIII of 1861, s. 27—Execution proceedings arising out of decision in regular appeal.*—S. 27, Act XXIII of 1861, barred a special appeal in execution proceedings arising out of decisions passed on regular appeal in suits of a nature cognizable by Courts of small Causes. *ANAND CHUNDERS ROY v. SINDY GOWA* Misses 8 W. R., 112.

DEBBS PRASHAD SINGH v. DELTAWAR AIR
[12 W. R., 86.]

89. *Civil Procedure Code, s. 586—Orders in execution of decrees in Small Cause suits.*—No second appeal lies from an order passed in execution of a decree in a suit of the nature cognizable by a Small Cause Court where the subject-matter of the suit does not exceed Rs500. *ATHAYIA v. SUBBANNA*. I. L. R., 12 Mad., 116.

90. *Order in execution of decree in suit cognizable by Small Cause Court.*—Where the original suit is a suit of the nature cognizable in Courts of Small Causes and the subject-matter of the suit does not exceed Rs500 in value, no second appeal will lie in respect of an order made in execution proceedings relating thereto. *HARAKH v. RAM SARUP, I. L. R., 12 All., 579, approved.* *Sri Bulow Bhatia Chaiti v. Baburam Chattopadhyaya, I. L. R., 11 Cal., 169, and Arithala v. Subbanna, I. L. R., 12 Mad., 116, referred to.* *DIN DAXAR v. PATBA KHAN* I. L. R., 18 All., 481.

91. *Suit of the nature cognizable in Courts of Small Causes—Transfer of decree.*—*Civil Procedure Code, ss. 223, 228, 586.*—Where the original suit is a suit of the nature cognizable in Courts of Small Causes, and the subject-matter of the suit does not exceed Rs500 in value, no second appeal will lie in respect of an order made in execution proceedings relating thereto. *HARAKH v. RAM SARUP, I. L. R., 12 All., 579, approved.* *Sri Bulow Bhatia Chaiti v. Baburam Chattopadhyaya, I. L. R., 11 Cal., 169, and Arithala v. Subbanna, I. L. R., 12 Mad., 116, referred to.* *DIN DAXAR v. PATBA KHAN* I. L. R., 18 All., 481.

92. *Suit of the nature cognizable in Court of Small Causes—Civil Procedure Code, ss. 586, 622—Superintendence of High Court.*—For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. Therefore where execution was applied for in the Munsifs Court in respect of a sum of Rs422-14-0, the value of the matter in dispute in the original suit (which was of the nature cognizable by a Court of Small Causes) having been above Rs500 and the Munsifs order having been upheld in appeal by

SPECIAL OR SECOND APPEAL

3. ADMISSION OR SUMMARY REJECTION

OF APPEAL—continued.

84. *Confirmation of decree in* *Rect—Civil Procedure Code (1882), s. 551.—The decision of the Full Bench in Rukunayyagar v. Seshayyagangar, I. L. R., 18 Mad., 214, where it was held that the jurisdiction of a Court of first instance under a decree under s. 206 of the Civil Procedure Code is ousted by the confirmation of that decree on appeal, applies equally to second appeals dismissed under s. 551 of the Code and to second appeals tried after notice to the respondent.* *MUNI-AMT NAYD v. MUNISAMI REDDI* [I. L. R., 22 Mad., 293]

85. *Frame of suit—Civil Procedure Code, s. 586.*—For the purpose of determining whether a second appeal lies or is prohibited by s. 586 of the Civil Procedure Code, what must be looked at is not the shape in which the case comes up to the High Court, but the shape in which the suit was originally instituted in the Court of first instance. *KIAM-UD-DIN v. HAZZO* [I. L. R., 11 All., 13]

86. *Cases in which appeal is taken away—Act XXIII of 1861, s. 27—Civil Procedure Code, 1859, s. 387—S. 27, Act XXIII of 1861, took away special appeal in all those cases that were expressly alluded to therein, thus overruling s. 387, Act VIII of 1859. The provision applied in execution of decree, as well as in suits commenced before 1851, or even before 1859. *RAM ADUR CHATTERJEE v. RASH MONNE DOSSER* [8 W. R., 321]*

87. *Order in execution of decree—Suit brought before Act XXIII of 1860.*—No special appeal lay from a regular appeal from an order made in execution of a decree passed in a suit of a nature cognizable by a Small Cause Court, though the suit was instituted before the passing of Act XXIII of 1860. *GORA CHAND MISSER v. BOX-ANTO NARAIN SINGH* [12 B. L. R., 201: 20 W. R., 421]

88. *Order in execution of decree—Suit brought before Act XXIII of 1860.*—No special appeal lay from a regular appeal from an order made in execution of a decree passed in a suit of a nature cognizable by a Small Cause Court, though the suit was instituted before the passing of Act XXIII of 1860. *GORA CHAND MISSER v. BOX-ANTO NARAIN SINGH* [12 B. L. R., 201: 20 W. R., 421]

89. *Order in execution of decree—Suit brought before Act XXIII of 1860.*—No special appeal lay from a regular appeal from an order made in execution of a decree passed in a suit of a nature cognizable by a Small Cause Court, though the suit was instituted before the passing of Act XXIII of 1860. *GORA CHAND MISSER v. BOX-ANTO NARAIN SINGH* [12 B. L. R., 201: 20 W. R., 421]

90. *Order in execution of decree in suit cognizable by Small Cause Court.*—Where the original suit is a suit of the nature cognizable in Courts of Small Causes and the subject-matter of the suit does not exceed Rs500 in value, no second appeal will lie in respect of an order made in execution proceedings relating thereto. *HARAKH v. RAM SARUP, I. L. R., 12 All., 579, approved.* *Sri Bulow Bhatia Chaiti v. Baburam Chattopadhyaya, I. L. R., 11 Cal., 169, and Arithala v. Subbanna, I. L. R., 12 Mad., 116, referred to.* *DIN DAXAR v. PATBA KHAN* I. L. R., 18 All., 481.

91. *Suit of the nature cognizable in Courts of Small Causes—Transfer of decree.*—*Civil Procedure Code, ss. 223, 228, 586.*—Where the original suit is a suit of the nature cognizable in Courts of Small Causes, and the subject-matter of the suit does not exceed Rs500 in value, no second appeal will lie in respect of an order made in execution proceedings relating thereto. *HARAKH v. RAM SARUP, I. L. R., 12 All., 579, approved.* *Sri Bulow Bhatia Chaiti v. Baburam Chattopadhyaya, I. L. R., 11 Cal., 169, and Arithala v. Subbanna, I. L. R., 12 Mad., 116, referred to.* *DIN DAXAR v. PATBA KHAN* I. L. R., 18 All., 481.

92. *Suit of the nature cognizable in Court of Small Causes—Civil Procedure Code, ss. 586, 622—Superintendence of High Court.*—For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. Therefore where execution was applied for in the Munsifs Court in respect of a sum of Rs422-14-0, the value of the matter in dispute in the original suit (which was of the nature cognizable by a Court of Small Causes) having been above Rs500 and the Munsifs order having been upheld in appeal by

93. *Admission or summary rejection of appeal—continued.*

94. *Admission or summary rejection of appeal—continued.*

SPECIAL OR SECOND APPEAL

—continued

96 SMALL CAUSE COURT SUITS—continued
Civil Procedure Code, 1882, s 556—Where a suit, though one cog-

97 Suits transferred to regular
Civil Procedure Code, s 550—Provisional
Small Cause Courts Act (IX of 1887), s 2—A
suit of a nature cognizable by a Small Cause Court

98 Question of jurisdiction—
Provisional Small Cause Courts Act (IX of 1887),
s 16—Civil Procedure Code (Act XII of 1882),
Act of

99 Suits for balance of account—
Act XXIII of 1861, s 27—Suits in Civil Court in
local jurisdiction of Small Cause Court—Where a
suit for a balance due on account of rents collected
from the plaintiff's zamindars by the defendant's

100 Suits for balance of account—
Act XXIII of 1861, s 27—Suits in Civil Court in
local jurisdiction of Small Cause Court—Where a
suit for a balance due on account of rents collected
from the plaintiff's zamindars by the defendant's

101 Suits for balance of account—
Act XXIII of 1861, s 27—Suits in Civil Court in
local jurisdiction of Small Cause Court—Where a
suit for a balance due on account of rents collected
from the plaintiff's zamindars by the defendant's

102 Suits for balance of account—
Act XXIII of 1861, s 27—Suits in Civil Court in
local jurisdiction of Small Cause Court—Where a
suit for a balance due on account of rents collected
from the plaintiff's zamindars by the defendant's

103 Suits for balance of account—
Act XXIII of 1861, s 27—Suits in Civil Court in
local jurisdiction of Small Cause Court—Where a
suit for a balance due on account of rents collected
from the plaintiff's zamindars by the defendant's

SPECIAL OR SECOND APPEAL

—continued

96 SMALL CAUSE COURT SUITS—continued

97 Suits transferred to regular
Civil Procedure Code, s 550—Provisional
Small Cause Courts Act (IX of 1887), s 2—A
suit of a nature cognizable by a Small Cause Court

98 Question of jurisdiction—
Provisional Small Cause Courts Act (IX of 1887),
s 16—Civil Procedure Code (Act XII of 1882),
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103 Suits for balance of account—
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104 Suits for balance of account—
Act XXIII of 1861, s 27—Suits in Civil Court in
local jurisdiction of Small Cause Court—Where a
suit for a balance due on account of rents collected
from the plaintiff's zamindars by the defendant's

105 Suits for balance of account—
Act XXIII of 1861, s 27—Suits in Civil Court in
local jurisdiction of Small Cause Court—Where a
suit for a balance due on account of rents collected
from the plaintiff's zamindars by the defendant's

with such suits, it was held that the case might be brought under the terms "claim for money due under a contract" in Act XI of 1865, s. 6, and that therefore would not be. *JOOQUT KISHORE ROY v. RUDHOO NATH SEAT*. 20 W. R., 4.

105. Suit on implied contract—*Civil Procedure Code, 1877, s. 586.*—A was the proprietor of 9 annas of a mouzah, B and his family of 1 anna, and C and others of the remaining 6 annas. B and his family, having occupied and enjoyed, to the exclusion of their co-shareholders, 54 bighas of the mouzah, failed to pay any rent in respect of such occupation. A instituted a suit against them (making C and the other holders of the 6 annas share-defendants to the suit) to recover the sum of Rs. 12-8 as the sum justly due to him after making all proper deductions, including as well the share of the rent of the 54 bighas to which the 6 annas shareholders were entitled as also the share which B and his family were entitled to retain as proprietors of a 1 anna share. *Held* that the facts showed an implied contract on the part of B and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them; and that, inasmuch as the total amount sought to be recovered in the suit by A did not exceed Rs. 500, the suit was one which might have been brought in a Small Cause Court, and therefore the plaintiff had no right of second appeal to the High Court under s. 586 of the Code of Civil Procedure. *ASMAN SINGH v. DOORGA ROY*. I. L. R., 6 Cal., 284; 7 C. L. R., 94.

106. Contract Act (IX of 1872), ss. 69, 70—Small Cause Court Act (XI of 1865), s. 6—*Parti rent—Implied contract.*—The plaintiff brought a suit in a Munsif's Court to recover from the defendant, a former holder of the patti right, a sum of money which she had been compelled to pay to the date of her purchase. The Munsif gave the plaintiff a decree, which, however, on appeal to the District Judge, was reversed. On appeal to the High Court, *Held* that, assuming the suit to be independent of any express promise, it was one cognizable by a Court of Small Causes, and no appeal would therefore lie. *Rambau Chittangoo v. Madhooosodan Paul Chowdhury, B. L. R., Sup. Vol., 675; 7 W. R., 377, distinguished* Cases falling within the provisions of ss. 69 and 70 of the Contract Act are cognizable by a Court of Small Causes under s. 6 of Act XI of 1865. *Nath Prasad v. Baiy Nath, I. L. R., 3 All., 66, approved.* *KRISHNO KAMINI CHOWDHURI v. GORI MOHUN GHOSH HAZRA*. I. L. R., 15 Cal., 652.

107. *Mogussil Small Cause Courts Act, s. 6—Civil Procedure Code, s. 586—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt*

101. Decision on award—Award of cognizable nature and value.—When the subject-matter of an award is as to its nature and value cognizable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. *BAHU v. NARAYAN SARKI*. [4 B. L. R., Ap., 82; 13 W. R., 233]

102. Suit on award—Award dealing with matters not within cognizance of Small Cause Court—Act XXIII of 1861, s. 27.—G and R referred to arbitration disputes between them regarding the partition of their paternal estate. The award found that a sum of Rs. 388 was due by G to R, and contained other provisions which could not be dealt with by a suit in a Small Cause Court. *Held* that a suit to recover the money due under the award could not be brought in the Small Cause Court, and that s. 97, Act XXIII of 1861, therefore did not bar a special appeal. *GAURI SARAI v. RAM SARAI*. [7 W. R., 157]

(c) AWARD.

103. Suit to recover collections from co-sharer.—Agreement to pay share to other co-sharers.—A suit by a co-sharer to recover from the defendant collections which are in his charge and which he is under agreement to pay to the other co-sharers is a suit for due under a contract, and, if less than Rs. 500, is cognizable by a Small Cause Court. *ALI AHMED v. OODHARAI RAM*. 10 W. R., 79.

104. Suit against agent for money—Money received for plaintiff—Act XXIII of 1861, s. 27.—In a suit to recover the balance, unaccounted for, of the plaintiff's money in the hands of the defendant, who had been employed as a law agent on a salary to conduct and look after the plaintiff's law suits and to receive and disburse moneys connected

100. Suit against agent for account, or, in default, for damages.—*Plaintiff, a talukdar, sued her late husband's agent for the delivery up of certain account papers and documents, for an account of his agency, and, in default of account, for Rs. 500 as damages. Held* that the suit was of a nature cognizable by a Small Cause Court, and that consequently no special appeal would lie. *HURRI NARAIN ROY CHOWDHURY v. JOY DURGA DASSI*. 2 C. L. R., 17.

100. [I. L. R., 1 Cal., 123; 24 W. R., 478]

100. *NUNDON SEN v. MADHUR MITTER GOOPTA*

100. *CAUSE COURT HAVING JURISDICTION TO TRY IT. DRYBARKER*

100. *brought in a Civil Court, because there is no Small Cause Court having jurisdiction to try it.*

100. *of 1861 only applying to a suit which is properly brought in a Civil Court, s. 27 of Act XXIII*

100. *under Rs. 500 was entertained by the Civil Court within the local jurisdiction of a Small Cause Court, a special*

father acting as agent of the plaintiffs for an amount under Rs. 500 was entertained by the Civil Court within the local jurisdiction of a Small Cause Court, a special appeal lay to the High Court, s. 27 of Act XXIII of 1861 only applying to a suit which is properly brought in a Civil Court, because there is no Small Cause Court having jurisdiction to try it. *DRYBARKER v. NUNDON SEN v. MADHUR MITTER GOOPTA*. [I. L. R., 1 Cal., 123; 24 W. R., 478]

100. Suit against agent for account, or, in default, for damages.—*Plaintiff, a talukdar, sued her late husband's agent for the delivery up of certain account papers and documents, for an account of his agency, and, in default of account, for Rs. 500 as damages. Held* that the suit was of a nature cognizable by a Small Cause Court, and that consequently no special appeal would lie. *HURRI NARAIN ROY CHOWDHURY v. JOY DURGA DASSI*. 2 C. L. R., 17.

101. Decision on award—Award of cognizable nature and value.—When the subject-matter of an award is as to its nature and value cognizable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. *BAHU v. NARAYAN SARKI*. [4 B. L. R., Ap., 82; 13 W. R., 233]

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(d) CONTRACT.

103. Suit to recover collections from co-sharer.—Agreement to pay share to other co-sharers.—A suit by a co-sharer to recover from the defendant collections which are in his charge and which he is under agreement to pay to the other co-sharers is a suit for due under a contract, and, if less than Rs. 500, is cognizable by a Small Cause Court. *ALI AHMED v. OODHARAI RAM*. 10 W. R., 79.

104. Suit against agent for money—Money received for plaintiff—Act XXIII of 1861, s. 27.—In a suit to recover the balance, unaccounted for, of the plaintiff's money in the hands of the defendant, who had been employed as a law agent on a salary to conduct and look after the plaintiff's law suits and to receive and disburse moneys connected

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100. *with such suits, it was held that the case might be brought under the terms "claim for money due under a contract" in Act XI of 1865, s. 6, and that therefore would not be. JOOQUT KISHORE ROY v. RUDHOO NATH SEAT. 20 W. R., 4.*

100. *105. Suit on implied contract—Civil Procedure Code, 1877, s. 586.—A was the proprietor of 9 annas of a mouzah, B and his family of 1 anna, and C and others of the remaining 6 annas. B and his family, having occupied and enjoyed, to the exclusion of their co-shareholders, 54 bighas of the mouzah, failed to pay any rent in respect of such occupation. A instituted a suit against them (making C and the other holders of the 6 annas share-defendants to the suit) to recover the sum of Rs. 12-8 as the sum justly due to him after making all proper deductions, including as well the share of the rent of the 54 bighas to which the 6 annas shareholders were entitled as also the share which B and his family were entitled to retain as proprietors of a 1 anna share. Held that the facts showed an implied contract on the part of B and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them; and that, inasmuch as the total amount sought to be recovered in the suit by A did not exceed Rs. 500, the suit was one which might have been brought in a Small Cause Court, and therefore the plaintiff had no right of second appeal to the High Court under s. 586 of the Code of Civil Procedure. ASMAN SINGH v. DOORGA ROY. I. L. R., 6 Cal., 284; 7 C. L. R., 94.*

4. SMALL CAUSE COURT SUITS—continued.

122. Suit for defamation of character—*Absence of pecuniary injury*—Suits for defamation of character, where there has not been any actual pecuniary loss, were not, under cl. 3, s. 6, Act XI of 1865, cognizable by the Small Cause Courts, and therefore in such a suit a special appeal would lie under Act XXIII of 1861, s. 27. BHANAB CHANDRA CHOKKIBATTY v. MAHENDRA CHANDRA CHOKKIBATTY

14 B. L. R., Ap., 59: 13 W. R., 118

123. *Absence of pecuniary damage*.—*Quere*—Before a suit can lie in a case of defamation of character, is it necessary to presume that actual pecuniary damage has resulted? DURGEO DOSS KOONDU v. KOYIASH KANWAR DOSSIA

12 W. R., 372

124. Suit for malicious prosecution—*Absence of pecuniary damage*.—The defendant laid a charge of assault against the plaintiff before the Magistrate, and the charge was heard and dismissed. The plaintiff then brought a suit for damages occasioned to his reputation by the false and malicious charges, laying the damages at Rs 150; but no actual pecuniary loss in consequence of the charge was alleged. *Held* that it was not a suit cognizable by the Small Cause Court, and therefore a special appeal would lie. PHANAKRISHNA BANERJEE v. NADIA CHAND CHATTERJEE

14 B. L. R., A. C., 35 note: 10 W. R., 115

125. *Injury to reputation*.—The defendant charged the plaintiff with plotting to murder him, and the case came before the Magistrate and was dismissed. The plaintiff then sued in the Munsif's Court for damages on account of the injury "to his reputation and pain of body and mind" caused by the malicious prosecution, and laid the damages at Rs 100. A special appeal to the High Court was dismissed on the ground that it was a suit cognizable by a Small Cause Court. NADIA CHAND ROY v. BAIKANT NATH MISSEK

14 B. L. R., A. C., 33 note

126. Suit for damages for loss of reputation and business.—A suit for damages not exceeding Rs 500 on account partly for injury to reputation and partly for loss in business and professional position was held to come within the provisions of s. 6, Act XI of 1865, and was not open to special appeal. BROJO SCODUR BHADURAR v. ESHAN CHUNDER ROY

15 W. R., 179

127. Suit for money paid as rent to save estate from sale—*English payment where rent had been already paid*—Act XXIII of 1861, s. 27—Act XI of 1865, s. 6—Act X of 1859, s. 23, cl. 2.—The plaintiff, the holder of a patti taluk, by an arrangement with the defendants, his zamindars, paid the Government revenue and the road-taxes for the year 1874, and then tendered the balance of the rent for that year to the defendants, but they refused to accept it; and he therefore deposited it in the Munsif's Court in accordance with s. 46

4. SMALL CAUSE COURT SUITS—continued.

117. Suit to recover money attached—*Removal of attachment on wrongful objection to attachment of property*.—C, a decree-holder, alleging that K, a landlord of a village, had objected to the attachment in his hands of money due as profits to the judgment-debtor, a co-sharer, on the ground that he had paid such money to the judgment-debtor before the attachment, by reason whereof the attachment had been removed, and that such objection was dishonest and wrongful, inasmuch as such money was still in K's hands sued K for the amount of such money and the costs of the attachment proceedings. *Held* that the suit was one for damages, and the amount claimed not exceeding Rs 500, one of the nature cognizable in a Court of Small Causes, and consequently a second appeal in the suit would not lie. KATAY SINGH v. CHUNNI LAL

18 W. R., 283

SOONDER PANDAY

118. Suit for money lent to redeem mortgage—*Suit for damages as on breach of contract*—Act XXIII of 1861, s. 27.—Defendant borrowed a sum of money below Rs 500 from the plaintiff, with a view to redeem a mortgage on condition that, after redemption, he would sell the property to the plaintiff. He did not, however, redeem his dues as one for damages as upon a breach of contract in which, under s. 27, Act XXIII of 1861, no special appeal would lie. KANTLER MAHOMED v. RUBZAM ALIY

12 W. R., 269

119. Suit for damages for breach of contract controlling terms of decree.—No special appeal lies in a suit for damages for breach of a private arrangement by which the parties agree to control the terms of a decree, when the amount is within the jurisdiction of the Small Cause Court. CHUNDY PRASAD DOSS v. KASSERATH DOSS

17 W. R., 1864, 346

120. Suit for damages to crops by inundation—*Omission to cut-bund*—Act XXIII of 1860, s. 3.—Under s. 3, Act XLII of 1860, a suit for damages of any kind below Rs 500 (e.g., a suit for damages for not cutting through a bund whereby plaintiff's crops were destroyed in consequence of accumulation of water) was cognizable by a Small Cause Court; and consequently, under s. 27, Act XXIII of 1861, no special appeal lay in such a case. GOPERNATH PAUL v. GONGER

16 W. R., 7

121. Suit for damages for inadequate sale of a decree.—*Act XXIII of 1861, s. 27*.—No special appeal lay under s. 27, Act XXIII of 1861, for damages for inadequate sale of a decree. KRISTOMONER THAKOOR v. BISHAMBHER DOSS

15 W. R., 215

122. Suit for damages for inadequate sale of a decree.—*Act XXIII of 1861, s. 27*.—No special appeal lay under s. 27, Act XXIII of 1861, for damages for inadequate sale of a decree. KRISTOMONER THAKOOR v. BISHAMBHER DOSS

SPECIAL OR SECOND APPEAL

4 SMALL CAUSE COURT SUITS—continued.

Code, s. 556 *Held* that the objection should prevail, since the suit was not excepted from the jurisdiction of the Small Cause Court under the Provisional Small Cause Courts Act of 1837. *AYANAYAT v. SUBHAKARYAN* I. L. R., 15 Mad., 298

(A) DEBTS

131 But for division of debt due to estate of deceased—*Held* that a suit for division of debt due to the deceased was cognizable by a Small Cause Court, and no special appeal lay to the High Court. *ODDITTA v. GOWAT* 25 Agre., 294

(V) DECLARATORY DECREE

132 Suit to have property made over to plaintiff on an adjusted account—Where, on an adjusted account between two parties one claims from the other some money and some grain which are shown to be due to him and sale in effect that they may be made over to him, the suit is not a suit for a declaratory decree, and a special appeal does not lie in such a suit to the High Court under s. 27 Act XXIII of 1861. *BHAM SURESH LALL* 25 W. R., 234

(U) DECREE.

133. Decree for land under a compromise in a suit cognizable by a Small Cause Court—*Act XXIII of 1861, s. 27*—In a suit for recovery of a sum of money below Rs. 500, the parties entered into a compromise, whereby the defendant made over a certain piece of land in lieu of the money claimed, and a decree was passed accordingly. In execution of the decree, disputes arose between the parties. Upon special appeal by the judgment debtor to the High Court—*Held* that under s. 27, Act XXIII of 1861 no special appeal lay to the High Court. *TAYAN BIR v. KESAV BIR* 6 B. L. R., Ap., 87; 15 W. R., 66

134. Suit for kuttubadi and karnam's emolument—*Civil Procedure Code (1862), s. 556—Provincial Small Cause Courts Act (IX of 1897), sec. 1, art. 13*—Where plaintiff sued for arrears of kuttubadi and karnam's emolument, the value of the suit being less than Rs. 500—*Held* that kuttubadi and karnam's emolument are neither a charge on, nor interest in, immovable property, and that no second appeal lay. *MULLAVADI BATH-KUNSHAKATTA v. KUNSHAKATTA* I. L. R., 19 Mad., 339

See VENKATARAMA DOSS v. MANAYAT v. VIZIANKARAM I. L. R., 19 Mad., 103

SPECIAL OR SECOND APPEAL

—continued

4. SMALL CAUSE COURT SUITS—continued.

Of the defendants. One of the defendants then took proceedings under Bengal Regulation VIII of 1819 to recover his share of the rent, and notwithstanding the protest of the plaintiff that the rent had been already paid obtained an order for the sale of the tenure, and to prevent the sale the plaintiff had to recover that amount with interest—*Held* it was a suit cognizable by a Court of Small Causes under s. 6 of Act XI of 1860, and therefore a special appeal was barred by s. 27, Act XXIII of 1861. It was not a suit for "damages on account of illegal execution of rent" within the meaning of cl. 2, s. 23 of Act X of 1859. *KRISHNA KISHORE SHAMA v. BHANESWAR MOZOOMDAR* I. L. R., 4 Calc., 595; N. C. L. R., 177

128 Suit for payments made on account of rent—*Refusal to allow for each year interest in rent account*—A suit to recover certain cash and the value of certain grain which the defendants had persuaded the plaintiff to pay them engaging that the landlord would all in the same in his account (as part payment of rent), but which the landlord refused to do, as practically a suit for damages, and the amount in question being cognizable by a Small Cause Court, no special appeal can be entered. *YACOOB ALI v. KOOBER SIKAR* 2 W. R., 111

130. Suit for profits of land—*Provincial Small Cause Courts Act (IX of 1897), s. 29*—*12 W. R., 29*

131 B. L. R., Ap., 86
LAKSHMI DEBIA v. MANOHAR HAVSODHAR
S. C. RAMMOHAR DEBIA v. MANOHAR HAVSODHAR
12 W. R., 29
130. Suit for profits of land—*Provincial Small Cause Courts Act (IX of 1897), s. 29*

The defendant raised a plea to the jurisdiction of the Court, and the Judge, without recording any

that no second appeal lay under the Civil Procedure

SPECIAL OR SECOND APPEAL —continued.

2. SMALL CAUSE COURT SUITS—continued.

(1) MAINTENANCE.

135. — **Suit by widow for maintenance.**—*1st XVIII of 1961, p. 27.*—A Hindu widow who had been supported by her father-in-law after his death and his wife on for maintenance and of claimed a decree for MCO, notwithstanding the fact that she had been supported by her father-in-law who had died before her husband's death, he was not a fully liable for the maintenance claimed. *MCO* that as this was a Small Cause Court suit, an appeal did not lie. **HANCHANDRA DINKHAT v. SAVITRIBAI**

[1st Bom., A. C. 73]

DEVAL NOL HANCHAND DINKHAT v. HIRA MATHI

[1st Bom., A. C. 75]

(2) MISC. PROCEEDINGS.

136. — **Suit for means profits.**—*1st XVIII of 1961, p. 27.*—Suit under s. 27, Act XVIII of 1901, for the recovery of means profits for the use of means in the Small Cause Court. It is held that a suit for means profits is not a Small Cause Court suit. **KANAI SANKARAN v. GORIP KANAI**

[8 Bom., A. C. 89]

1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.

137. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.**—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.

138. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.**—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.

139. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.**—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.

140. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.**—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.

3. SMALL CAUSE COURT SUITS—continued.

SPECIAL OR SECOND APPEAL

140. — **Suit for means profits.**—*1st XVIII of 1961, p. 27.*—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.**—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.

141. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.**

142. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.**

143. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.**

144. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.**

145. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.**

146. — 1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment. **1st XVIII of 1961, p. 27.—In a suit for means profits, the plaintiff is entitled to interest on the amount of the means profits from the date of the judgment.**

SPECIAL OR SECOND APPEAL

—continued

4. SMALL CAUSE COURT SUITS—continued.

149. Suit for enforcement of hypothecation against moveable property—*Act XI of 1865, s. 6* A suit by the assignee of a registered mortgage bond hypothecating certain crops to enforce the hypothecation was not a small cause Court suit within the meaning of s. 6 of Act XI of 1865, in which a second appeal would be barred by s. 6 of the Civil Procedure Code. *Surajpal Singh v. Jaramsing, I. L. R. 7, All. 555, Ram Gopal Shah v. Ram Gopal Shah, II W. R. 136, and Appeal, Patil v. Singayya, 3 Mad. 47, referred to KATTA PRASAD v. CHANDRA SINGH, I. L. R. 10 All. 20*

150. Suit for price of personal property sold.—*Suit by co-sharer*—A suit lies in a small cause Court by a co-sharer to recover the price of a share of personal property alienated by another co-sharer. *KADYAKAT SHAMA v. KANAR KES SOODHAKAR DASS, 2 W. R. 37*

151. Suit for materials of hut, or their value.—*Act XXIII of 1861, s. 27*—A suit for materials of a hut, in which the plaintiff sought for a decree to break up and remove the same to obtain their value (H29), was held to be a case cognizable by a Small Cause Court under Act XI of 1865, s. 6, and therefore no special appeal would lie. *KANAR CHANDRA DUTT v. JUDOOCHAND GATKAR, 10 W. R. 29*

152. Suit to recover possession of share of a boat.—*Act XXIII of 1861, s. 27*—A suit to recover possession of the plaintiff's right in a suit for personal property within the meaning of Act XI of 1865, s. 6, and therefore no special appeal lies in such a case under Act XXIII of 1861, s. 27. *MANOHAR AZIM BHOGYAN v. MANOHAR BOWLE, 21 W. R. 413*

153. Suit for the value of trees and fish.—*Trees destroyed by defendant*—A suit to recover the value of a tree destroyed by the defendant and for the value of fish taken from the plaintiff's tank (the claim being under H500) is a case cognizable by a Small Cause Court, and no special appeal lies to the High Court. *BURJAD AIR 15 N. W. 24*

—continued

4. SMALL CAUSE COURT SUITS—continued

144. Suit for money illegally levied on land.—*Act I of 176, s. 15*—*Civil Procedure Code, 1876, s. 656*—The plaintiff sued to recover from the defendant Rs 133, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary assessment and local fund cess. The defendant, being a minor, was represented by the Collector as his administrator. The Assistant Judge who tried the suit awarded the plaintiff's claim. The District Judge, on appeal, reduced the amount of the plaintiff's claim to Rs 34-4-0, but upheld the decree of the first Court in other respects. The defendant thereupon made a second appeal in the High Court. Held, that under the Civil Procedure Code (Act I of 1877), s. 656 no second appeal lay, as the suit was one cognizable by a Small Cause Court. Act I of 1876, s. 15, remotes suits to which the Collector is a party to the jurisdiction of the Small Cause Court but the nature of the suit remains unaltered. *MUSA MITA BAKSH v. GULAM HUSAIN, 11 L. R. 7 Bom. 100*

145. Suit by lessee for refund of revenue.—*Contract to refund excess*—In a suit by a lessee upon a contract for a refund of excess revenue remitted by Government, a special appeal is not admissible if the amount claimed be under Rs 500. *[W. R. 1864, 297 WHITE v. THAKRA DOKKHA MOOKERJEE]*

146. Suit to recover money paid in excess of share of profits of land.—A suit to recover from the defendant Rs 235, paid to

(c) MONTAGUE

147. TIPPANA v. MAJUMDAR BIKAR
[4 B. L. R. 47, 48]
Collector of the High Court
Collector of the High Court

party, is not a suit of a nature cognizable in Courts

SPECIAL OR SECOND APPEAL.

4. SMALL CAUSE COURT SUITS—continued.

154. A special appeal would not lie. SHAMANUD v. NUND-KOOMAR [3 Agre, 290: Agre, F.B., Ed. 1874, 153]

155. Suit for value of sugar-mill. A stone sugar-mill is moveable property, and a suit for the value of it, if under Rs500, will lie in the Small Cause Court. No special appeal lies therefore in such a suit. HIRMANUAT SINGH v. ATTHU SINGH [4 N. W., 15]

156. Suit by widow to recover personal property or its value taken from deceased—Act XXIII of 1861, s. 27.—The widow and heiress of a deceased person sued the defendants to recover personal property, valued at Rs200, said to have been taken by them from deceased in his lifetime. Held that a special appeal was barred by s. 27, Act XXIII of 1861. KAPANI BEWA v. KASH-BAM KUCH. 2 B. L. R., Ap., 23: 11 W. R., 93

(g) PRIORITIES OF LAND.

157. Suit to recover a certain sum on account of a share in property—Civ. Procedure Code (1752), s. 586—Prayer for account of title.—Plaintiffs sued to recover, on account of their share in the produce of certain dhara and khoti properties, Rs389-14-2, or any other sum which might be found due to them on taking account from the defendant, who was the managing khoti. The defendant denied the plaintiffs' right to the produce of some of the properties. The first Court and the Court of appeal found that the amount due to plaintiffs was Rs72-14-11. On second appeal, Held that the suit was a Small Cause Court suit, and no second appeal lay. The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKER v. BALAJI BAPUJI [1. L. R., 21 Bom., 248]

158. Suit for arrears of rent—Act XXIII of 1861, s. 27.—In suits for arrears of rents of land, when the claim is under Rs500, a special appeal lies to the High Court, such claims not being generally cognizable by Courts of Small Causes. RAKHONANDRA RAHUNATH v. ABRAJI BIN RASTYA [6 Bom., A. C., 12]

159. Bom. Reg. XVII of 1827, s. 31, cl. 3—Act XXIII of 1861, s. 27.—The expression "or former year" in Regulation XVII of 1827, s. 31, cl. 3, did not mean the year immediately preceding the current year, but any previous year, and a suit for rent could have been brought before a revenue officer, when Act XI of 1865 was passed, and not before the Small Cause Courts constituted by that Act. A special appeal lay in a suit of

SPECIAL OR SECOND APPEAL.

4. SMALL CAUSE COURT SUITS—continued.

160. this nature. KRISHNABAI RAKHONANDRA v. MANAJI BIN SAYAJI [11 Bom., 108]

161. Suit by an assignee of arrears of rent after they fall due, whether cognizable by the Small Cause Court—Bengal Tenancy Act (VIII of 1885), s. 3, sub-s. 5.—Held by the Full Bench (BANKERJI, J., dissenting), that a suit brought by an assignee of arrears of rent, after they fell due, for the recovery of the amount due, is a suit for rent, and therefore excepted from the cognizance of the Court of Small Causes, and a second appeal therefore lies in such a suit. SRISS CHUN-DEB BOSE v. NACHIM KAZI [1. L. R., 27 Cal., 827]

162. Suit for zamindari cess—Suit for payment for use of land—Act XXIII of 1861, s. 27.—Where the plaintiff claimed a sum of money under the name of a zamindari cess, but in point of fact what was claimed was such a suit account of the use of land.—Held that such a suit was a suit of a nature cognizable by a Small Cause Court under s. 6, Act XI of 1865, and that a special appeal would not lie. BUCHOO CHOWBRY v. GHODR-LAL [4 N. W., 56]

163. Suit for Government assessment and local fund cess—Suit for arrears of rent.—The defendant executed to the plaintiff in 1847 a mortgage kabuliati (i.e., one kabuliati corresponding to a lease at a fixed rental), agreeing to pay to the plaintiff Rs150 annually. At the date of the execution of the mortgage the Government assessment was Rs56-8-0, but in 1872 it was enhanced to Rs129-8-0, and a local fund cess of Rs4-9-0 imposed in addition. The plaintiff sued the defendant to recover from him the enhanced assessment and the cess. On appeal an objection was taken that the amount claimed by the plaintiff being less than Rs500, the suit was cognizable by a Court of Small Causes, and that therefore there was no second appeal. Held that the suit might be regarded as one for arrears of rent at an increased rate, and, as such, was not cognizable by a Court of Small Causes. BASHIRTI v. VERKATHA-MANA [1. L. R., 3 Bom., 154]

164. Suits for rent—Civ. Procedure Code (1852), s. 586—Provincial Small Cause Courts Act (IX of 1867), s. 15, sch. II, art. 8.—"Suits of the nature cognizable in Courts of Small Causes."—A suit for the recovery of rent other than house-rent does not become a suit of the nature cognizable in Courts of Small Causes within the meaning of s. 586 of the Code of Civil Procedure because a Judge of a Court of Small Causes has been invested by the

4. SMALL CASE COURT SUITS—continued.

MOYEE DABEA I W. R., 35

179. — Suit involving question of

little—suit for damages.—A special appeal was held

misappropriated under H500 cognizable by a Small

Cause Court, notwithstanding that the case involved

17 W. B. 73

RAM DVAL GANGOOLY v. HUBO SOONDUREE DOS.

STW 10 W. B., 2/72

180. ————— Suit for price of trees cut down and removed from the lot

XXIII of 1861, s. 27.—A suit for the price of trees

and have not removed the less than a year for dam-

whether the plaintiff is entitled as damages to the value

of his friends, was to go into evidence as to whether

recognizable by a Court of Small Causes, and no special

appeal will be. SHIP DEEN LEWAND & BUKSHAN
W B 1884 Mls 3

101

1861, s. 27—Claim by zamindar to wrecked pro-

perly-Savage.—A quantity of rice having been

left on the river bank by the owner for the remainder.

tion of the salivary glands, including some of the parotid glands.

of the former

Against the jockey for the value of the portfolio last

question of the custom entitling to property so

held. That this question was only incidentally raised.

... simply one for the value of moveable or personal

property and cognizable by a Court of small causes;

GRANT v. MODHOO SOODHN SINGH

01 '44 OT]

182. — Suit for arrears of main-
tenance.

[illegible]

head of sale, which contained the following provisions:

and

It is to pay £25 of the Queen's coin to me annually

Forfeited the property to B, who obtained possession.

on, and, after the mortgage, the annual payments

representatives of the vendor sued M and B to

discover artifacts of malikans, the amount spent upon a preliminary

jection made with reference to s. 586 of the Civil

procedures Code, that the intention of the Regulator

... was that suits directly and

Immediately involving questions of size or scope should not be cognizable by the Small

SPECIAL OR SECOND APPEAL

—continued.

5. GROUNDS OF APPEAL—continued.

Reversing the decision in *ASGAR BHARAR v. HUNTER MOHUN MOZOOMDAR*. 23 W. R., 56

198.

Proceeding to enforce decree—Act XIV of 1859, s. 20.—The question whether the action of the judgment creditor taken in execution of his decree was a proceeding taken to enforce the decree within the meaning of s. 20, Act XIV of 1859, was a question of fact for the decision of the Courts below, and not one of law on which to bring a special appeal to the High Court. *IRSHAD ALI v. RADHU SHAN*. 13 B. L. R., Ap., 1: 21 W. R., 188

199.

Order finding proceedings to enforce decree not bond fide—Act XIV of 1859, s. 20.—The question as to whether proceedings which had been taken to execute a decree had been taken bond fide to keep alive such decree was a question of fact, and no special appeal lay from an order finding that the proceedings taken were bond fide. *BHUBAN MOHUN CHATURVEDY v. SAVDAMINI DEBI*. 5 B. L. R., Ap., 59

200.

Service of notices.—Where a Judge found no evidence that the notices in certain execution-proceedings were not caused to be properly served, and that those notices were not made in good faith, the finding was held to be a finding of fact which could not be disturbed in special appeal. *ABDOOL AZEER v. BHUVANESWAR* [11 W. R., 263

201.

Service of notice of enhancement.—A decision that notice of enhancement was duly served cannot be interfered with in special appeal. *TARA PRASUNNO MOZOOMDAR v. BISHO NATH SIRCAR*. 23 W. R., 144

202.

Right of way.—In suits to enforce a right of way, the question whether the plaintiff has a right of way or not is a question of fact to be determined by the evidence produced of user. Where, on the evidence, the Judge found the plaintiff had not a right of way, *Held* there was no error of law which gave the plaintiff a right to a special appeal. *MAHOMED ALI v. JAGAT RAM CHANDRA*. 15 B. L. R., Ap., 84: 14 W. R., 124

203.

Finding of a lower Appellate Court as to user.—A finding of a lower Appellate Court as to a right of user being proved cannot be interfered with on special appeal, even though not very distinct as to the precise period of enjoyment. *WUZERKHOODJEKAR v. SHROBUND LALL*. 11 W. R., 285

204.

Code, s. 584—Powers of High Court on second appeal.—On second appeal by a landlord against a decree of a District Judge, who stated in his judgment that, "though the tenant admitted the execution of the muchlikha, it was not shown that he dispensed

SPECIAL OR SECOND APPEAL

—continued.

6. GROUNDS OF APPEAL—continued.

though excessive, if it is within the legal limit, cannot be interfered with in special appeal as an error of law. *JOHNEROODJEKAR MAHOMED v. DABBE PERSHAD SINGH*. 13 W. R., 22

192.

Refusal to award damages—Beng. Act VI of 1863, s. 2—Discretion of Court.—The refusal of a Court to award damages under s. 2, Bengal Act VI of 1862, is not a ground for special appeal, it being a matter of discretion to award them or not. *DHERRAJ MAHATAP CHAND v. DEBENDRE NATH THAKOOR*. [W. R., 1864, Act X, 68

GOPAL LAL THAKOOR v. MAHOMED KADIR. [W. R., 1864, Act X, 73

Sufficiency of evidence.—It is a question of law for the Court to decide on second appeal whether there is evidence before the Court, on which a Court could properly arrive at any given conclusion of fact. *BIDHUMUKHI DABBA CHOWDHURAI v. KERYUTULAH*. 11 L. R., 12 Cal., 93

194.

Question of law.—A special appeal will not lie upon a question of jurisdiction depending upon a question of fact, unless the fact has been determined by the lower Court or is admitted by the parties. *Queere*—Whether, if the fact appears, a special appeal will lie unless the error in procedure has affected the merits. *LUTEROONNISSA BHARER v. POOLIN BHARER SKIN v. W. R., F. B., 31: 1 Ind. Jur., O. S., 10* [1 Hay, 242

S. C. POOLIN BHARER SKIN v. LUTEROONNISSA BHARER. Marsh., 107

COURT OF WARDS v. ROOP MOONJURER KOORER. [25 W. R., 260

195.

what passes at sale in execution of decrees—Mixed question of law and fact.—The question what is actually bargained and paid for at an execution sale is a mixed question of law and fact, and the High Court on second appeal is not bound by the finding of the Court of first appeal with regard to it. *GNANARATNAM v. MUTHUSAMI*. 11 L. R., 13 Mad., 47

196.

Existence of legal necessity.—Where both the lower Courts found that there was no necessity for a widow to borrow money, the High Court refused in special appeal to consider it other than a question of fact, and held they could not interfere with the finding in special appeal. *INDRA CHANDER BADOO v. HIRANATH CHOWDHURY*. 11 Hay, 257

197.

Question of law—Onus probandi.—Where each of the parties has gone into evidence upon the issues raised in the lower Courts, no question as to whether the onus lies on the one or on the other can arise in special appeal. *HUNTER MOHUN MOZOOMDAR v. ASGAR BHARAR*. [23 W. R., 324

SPECIAL OR SECOND APPEAL

5 GROUNDS OF APPEAL—continued

with the petition, no objection was taken in the memorandum of appeal that the much less, which contained a statement that no petition was necessary. The High Court ordered that the Judge be asked to take the postscript into his consideration and submit a revised finding NARAYANA v. MOVI [I. L. R., 10 Mad., 363]

had been neglected or misconstrued. The High Court ordered that the Judge be asked to take the postscript into his consideration and submit a revised finding NARAYANA v. MOVI [I. L. R., 10 Mad., 363]

that the finding of the District Judge ought not to be accepted MADHAV BHANNOO v. BHAKTAVATSAL [I. L. R., 16 Bom., 540]

accepted MADHAV BHANNOO v. BHAKTAVATSAL [I. L. R., 16 Bom., 540]

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accepted MADHAV BHANNOO v. BHAKTAVATSAL [I. L. R., 16 Bom., 540]

SPECIAL OR SECOND APPEAL

5. GROUNDS OF APPEAL—continued.

—continued.

on what was termed a "well-known distinction between the share or private hands of an individual and the share or multiple hands held by recognized tenants." The exercise of certain rights of transfer or inheritance, etc., were regarded as evidence of fixity of tenure at a reasonable rent. On second appeal by the plaintiff to the High Court it was argued that the District Court having found, as a fact, that the defendants were permanent tenants bound to pay a reasonable rent, the High Court in second appeal was bound by that finding. *Held* that the case should be remanded for proper enquiry. No doubt, if the appeal in the District Court were conducted as if all the facts recorded by the subordinate Judge were admitted, the plaintiff could not in second appeal question those facts. But it did not appear that it was admitted that the distinction drawn between share and khata tenants was correct or that every khata tenant, as such, exercised the rights described by the subordinate Judge. Under the circumstances, it was clear that the decision of the District Judge was based neither on evidence nor admissions, and was therefore not binding in second appeal. *Vishwanath Bhatkar v. Dhondappa* [T. L. R., 17 Bom., 475.]

221. *Civil Procedure Code (Act XIV of 1882), ss. 554, 555*—Findings of fact distinguished from inferences or conclusions of law—*Inference of law which the facts found were insufficient to justify*—It is well settled that a Court of second appeal, for the purpose of considering the weight of the evidence, is not competent, according to ss. 554 and 555 of the Civil Procedure Code, to entertain a question as to the soundness of a finding of fact by the Court below. The first Courts' decision as to the effect of the evidence must stand final as to the facts. But the soundness of conclusions may involve matter of law, and may be questioned by a Court of second appeal. A conclusion was drawn by an Appellate Court affirming the judgment of the first Court that the defendant had accepted as a binding obligation upon him a mortgage executed by his mother, with whom he was a sharer by inheritance in the property charged. A higher Appellate Court, on a second appeal, decided that these conclusions were not warranted by the facts found, and reversed that judgment. *Held* that the third Court had not exceeded its powers under the above sections by reversing the decision of the Court below. The expression "specified" used in cl. (a) of s. 551, first introduced into the Code by the Act of 1877, means "specified in the memorandum or grounds of appeal." *Durga Chowdhuri v. Jewahar Singh Chowdhuri*, [T. L. R., 18 Cal., 23; T. R., 17 I. A., 122, followed. *Rajgopal v. Shamsukamat* [T. L. R., 20 Cal., 93; T. R., 19 I. A., 228.]

222. *Inference drawn from finding of fact*—It is open to the Court in second appeal to question the soundness of an inference drawn from a finding of fact. *Ram Gopal*

SPECIAL OR SECOND APPEAL

6. GROUNDS OF APPEAL—continued.

—continued.

215. *Error in law*—Where a Subordinate Judge held, from the fact of one person carrying on a business firm and appearing to the world to be the only person carrying it on, that there could be no other person in partnership with him, he was considered to have committed an error which materially affected his decision on the merits, and was a good ground for special appeal. *Shoober Chaudhri Khatun v. Koyash Chaudhri Mst.* [14 W. R., 23.]

216. *Findings on speculative reasoning*—A finding of fact arrived at upon reasons purely speculative amounts to a mistake which can be set aside by the High Court in special appeal. *Manohar Aiyaz Shah v. Shaver Mst.* [8 B. L. R., 26.]

217. *Improper assumption of, and inference from, facts*—A finding of fact by the lower Appellate Court was set aside on special appeal, and the case was remanded on the ground that the Judge assumed a state of things in favour of the defendant which the defendant had not urged, and which was contradictory to his case, and because the finding of the Judge was opposed to a proper inference which arose from such facts. *Sunduswar Ghose v. Choto Anzolan Mardat* [8 B. L. R., 47; 78: 17 W. R., 213.]

218. *Founding on errors of fact*—The High Court reversed on special appeal a judgment which was founded on many errors of fact, and sent it back for a re-trial. *Poonoo Chaudhri Chatterjee v. Chunder Coommar Roy*. [24 W. R., 171.]

219. *Omission to consider important portions of the evidence*—*Findings based on statement, not on evidence*—The lower Court, in its judgment, having omitted to make any mention of certain important documents or their bearing on the terms of a tenancy which were in question, *Held* that the lower Court having pre- sumably omitted to consider important portions of the evidence, the findings arrived at by it ought not to be accepted. *Held* also that the finding of the lower Court as to the plaintiff's claim being barred by limitation, being based on statements without referring to any evidence to establish them, could not be accepted. Case sent back for reconsideration and fresh decision. *Appa Katga Mst. v. Mst. I. L. R., 16 Bom., 477.*

220. *Decision of Judge not based on evidence given in the case*—*Findings of fact when binding in second appeal*—In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants; (2) that the plaintiff had no power to enhance; (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but

SPECIAL OR SECOND APPEAL

—continued
5 GROUNDS OF APPEAL—continued

Shamshatun I T R 20 Cal 93 referred to *Kishiyev Kishorevskiy & Kishorevskiy* 13 C W N, 255

—Findings of

be accepted in second appeal as a legal finding on if Govind & Vithal I T R, 20 Bom, 163

224 *Findings on the question of custom or usage mainly based on precedent matter—Dist. Ct. (1 of 1872) & 13*

—Mistaken—Remand—In re by a landlord for

requested to prove the usage. In second appeal the High Court upon an examination of the evidence

referred to by the lower Court of appeal and on reference to s. 13 of the Land Revenue Act (1 of 1872) held that the finding of that Court on the

extension of the usage having been mainly based on irrelevant matters the appeal was not properly

tried and the case must be remanded for re-trial *Women Chaudhary I T R 7* Cal 293 referred to *Palkarbhari Bai & Manikar*

225 *Proof of use*

—Misconception as to mode of proof—If a decree appealed against is based on wrong view of the law of evidence or on a misconception of the

causes which the Privy Council and the High Court have decided as to how a special custom should be

proved the High Court will interfere in second appeal. *Devi Bai Hanobhadas Vitthalbhai & Hanobhai* I T R, 21 Bom, 110

226 *Code (1882), ss 584 and 585—Inference of law*

which the facts found are insufficient to justify—Where the lower appellate Court arrives at a conclusion on which is an inference based upon an erroneous view of law the judgment is open to question on a second

appeal. *Lochmestwar Singh v. Dhanwar Hossein I T R 19* Cal, 253 I T R 19 I A 45 Bom

Gopal v. Shamshatun I T R 10 Cal 93 I T R 19 I A 293 referred to *Janak Chandra Das Sarkar & Bhanu Sarda*

227 *Enhanced rent*

on irrigated land—Implied contract—A landlord rendered for raygats on his estate potatoes providing (inter alia) for the payment of rent in which the land assessment was consolidated with a water cess in respect of certain land irrigated under the Kistna

canal. This had not been sanctioned by the Government under the Madras Rent Recovery Act s. 11 but it was found that it had been paid by the raygats for many years. The Court of first appeal held

on this finding that there were implied contracts on the part of the raygats to pay it. Held that the finding as to the existence of an implied contract to pay the enhanced rent was a finding of fact and must therefore be accepted on second appeal. *Sardar Narayan Ramkumar & Manikarbhari Parsad* I T R, 17 Mad, 43

228 *Civil Procedure*

Code (1882), ss 584 and 585—Inference of law

which the facts found are insufficient to justify—Where the lower appellate Court arrives at a conclusion on which is an inference based upon an erroneous view of law the judgment is open to question on a second

appeal. *Lochmestwar Singh v. Dhanwar Hossein I T R 19* Cal, 253 I T R 19 I A 45 Bom

Gopal v. Shamshatun I T R 10 Cal 93 I T R 19 I A 293 referred to *Janak Chandra Das Sarkar & Bhanu Sarda*

229 *Enhanced rent*

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SPECIAL OR SECOND APPEAL

—continued.

5. GROUNDS OF APPEAL—continued.

235. *Omission to draw inference.*—An omission of the Judge to draw an inference from the conduct of parties relied on as evidence is not an error of law which the High Court will interfere in special appeal. *SATI v. PUNGHANUN*. 25 W. R., 503

236. *Documentary evidence.*—Construction of document or inference to be drawn from its terms.—The question of what is the proper inference to be drawn from the terms of a document is a question of law within the meaning of s. 584, Civil Procedure Code, and can be considered in second appeal. *CHOOKALINGAM PILLAI v. MAYANAI CHETTIAR*. I. L. R., 19 Mad., 485

237. *Omission to consider evidence.*—Error in decision on the merits. Every Judge of a question of fact is bound to take into consideration all the allegations and proofs upon the record bearing upon that question, as well as the material presumptions arising therefrom, and to overlook them is a defect in law. But before such a defect can constitute a good and valid ground of special appeal, it must be of such a character that it may have caused an error in the decision of the case on the merits. *GUNNE BISWAS v. SAREGOVAL PATL CHOWDHRY*. 8 W. R., 395

238. *Decision of lower Court as to credit to be given to particular proofs.*—It is the province of the Court which has credited to which each particular proof offered is entitled; and with the fair exercise of its discretion in this respect by such Court, the High Court, as a Court of special appeal, is not at liberty to interfere. *MUTHA DASS v. MAH SINGH*. 2 N. W., 207

239. *Weight of reasons given for decision.*—No special appeal will lie on a ground relating merely to the weight of the reasons given by the lower Appellate Court for the conclusion arrived at. *DOORGA CHURN SART v. SHAMUND GOSWAIN*. 12 W. R., 376

240. *Weight of evidence.*—Discretion of Court under Act XL of 1858.—Weight of evidence is not a point on which the High Court can interfere in special appeal, nor will it interfere with the discretion of the Judge in not allowing a person to represent a minor. *DHOONDH BAHADOOR SINGH v. PRASAD SINGH*. 17 W. R., 314

241. *Giving credit to evidence.*—Where the lower Appellate Court has dealt with the evidence on both sides, has weighed it, and come to the conclusion that one side ought to be believed, the giving in the course of his observations a bad reason for believing it is not a ground of special appeal. *SHRO GOWAM SART v. MONABRO LATI SARTO*. 18 W. R., 110

SPECIAL OR SECOND APPEAL

—continued.

5. GROUNDS OF APPEAL—continued.

235. *Error of law warranting a special appeal.* *HIMMAT ALI KHADIV v. NYAKATTOOLAH KHADIV*. 23 W. R., 250

236. *Unsound conclusions.*—Special appeal allowed, and not warranted by law or reason, and had failed to try a material issue in the case. *MAHARAJ SHRIKIN v. NAKOWAT DAS MAHABAR*. 7 B. L. R., 47, 17

237. *Civil Procedure Code, s. 584—Substantial error in a first appeal.*—The Court of first instance dismissed the suit upon the ground that the right to the compromise entered into by a guardian on behalf of an infant party to former proceedings. This was reversed by the first Appellate Court, which decreed the claim, holding it unaffected by the compromise, on the ground that the latter was, in fact, contrary to the interests of the infant. The High Court, on a second appeal, set aside this finding, there having been no proof that the compromise was to the infant's detriment, and affirmed the decree of the first Court. Held that the High Court rightly reversed the decree of the first Appellate Court; the above finding, without any evidence to support it, being a substantial error in the proceedings, and good ground of second appeal within the meaning of s. 584, sub-b. (c), of the Civil Procedure Code. *HEXANTIA KUMARI DEBI v. BROJENDRO KRISHNOR ROY CHOWDHRY*. I. L. R., 17 Cal., 875

238. *Error in legal conclusion or inference from evidence.*—In a suit to enforce a right to share in the profits of a ferry, the defendant set up an exclusive title and adverse possession. Held that, the decision that the defendant's possession had been adverse having been an inference from a fact in the Courts below, the correctness of this as a legal conclusion to be drawn or not was a question open to second appeal, and the High Court was not precluded from deciding to the contrary. *LACHMESWAR SINGH v. MANWAR HOSSAIN*. I. L. R., 19 Cal., 253

239. *Omission of Appellate Court to consider presumption of facts material to case.*—When an Appellate Court appears not to have taken into its consideration a presumption of facts arising out of the circumstances in the case, that is such an omission and defect (ss. 354 and 372, Act VIII of 1859) as the High Court will remedy on special appeal by directing an issue. *NIJATUDDIN v. VENKATACHARYA MUDALI*. 1 Mad., 131

240. *Omission of Appellate Court to consider presumption of facts material to case.*—When an Appellate Court appears not to have taken into its consideration a presumption of facts arising out of the circumstances in the case, that is such an omission and defect (ss. 354 and 372, Act VIII of 1859) as the High Court will remedy on special appeal by directing an issue. *NIJATUDDIN v. VENKATACHARYA MUDALI*. 1 Mad., 131

5. GROUNDS OF APPEAL—continued.

where such conclusions are based upon evidence inadmissible by law, or proceed upon an erroneous view

and, or are attributed to a number of persons or to a corporation, such as the rules of evidence or other law, such

conclusions, though they purport to be distinct and
independent, would lay the judgment of the lower
court open to review.

Appellate Court open to second appeal under cl. (c) of s. 584, so long as the error was substantial

enough to have possibly affected the justice of the case upon the merits. NIVATH SINGH v. BHIRKRI

SINGH, BHIRKEI SINGH & NIVARTH SINGH
[I. T. R., 7 ALL, 648]

050 'HIF : 'AT 'IT 'IT]

248. Finding on—Issue of fact remitted—Civil Procedure Code.

1882, ss. 565, 566, 568.—*Held* by the Full Bench.

(JAMES, J., dissenting) that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in fact

[illegible]

stricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh v.*

*Bhikhi Singh I. T. R., 7411, 649, referred to. Per
PETERMAN, C. J., and TYPRELL, J.—Sa. 565 and 566*

of the Civil Procedure Code are, as far as may be, incorporated in Ch. XLII of the Code relating to second

appears, and when the evidence for disposing of the

real issues in the case had been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine

bearing of those who, in addition, are not to be taken into account, and not to such issues on the record, and not to

put the parties to the expense and delay involved by a remand. *Per STRATTON, J.*—S. 587 of the Civil

Procedure Code does not mean that the provisions of Ch. XLI relating to first appeals are to be applied in-

discriminately or in their entirety to second appeals, and implies no warrant for the decision by the High

Court of questions of fact in any shape or at any stage of a second appeal. *Ramnarain v. Bhawan-*

Singh v Talu Singh, Weekly Notes, All., 1882, p. 101, and Sheoambar
Singh v Talu Singh, Weekly Notes, All., 1882.

p. 158, referred to. *Per* TARRANT, J.—The jurisdiction of Courts of second appeal in respect of ques-

tion of fact is restricted, in so much as the appeal may not be entertained "on grounds," of fact, but

under the circumstances of s. 566 of the Code, no less than under the abnormal circumstances contemplated

than under the abnormal circumstances contemplated by the ruling of the Full Bench in *Wicath Singh v. Preet Singh*, T. R. 7411-649, the Court may

Bhikkh Singh, L. L. R., v. All, 649, the Court may

determine them if there be evidence upon the record sufficient for that purpose. In cases where the Court,

still acting under s. 566, has been obliged in the absence of evidence on the record to supplement the

defect through the agency of the Court below, its jurisdiction in respect of such evidence does not be-

come limited thereby or by reason only of the cir-
cumstance that the evidence is accompanied by a

"finding" of the inferior Court, - the term "finding" being used in s. 566 in its restricted sense of an

answer to the proposition referred for inquiry, and

SPECIAL OR SECOND APPEAL

—continued

5 GROUNDS OF APPEAL—continued

Lachmestwar Singh v. Kanwar Hossein I. R., 19 Cal., 253 T. R. 191 A. 48 and Ram Gopal v. Samakhshaton, I. T. R. 20 Cal. 93 T. R., 19 I. A. 228 referred to Rajaram v. Ganesh Hari Karkhanias I. T. R., 21 Bom., 91

256 *Misdirection—*

Ground for a second appeal *Ramrooad Das v. Kalya Kora 50 C. I. R., 94*

Devaiah Monvett v. Bhavett Chutkora Roy 23 W. R., 160

Abdul Honkar v. Sohy Mirhathya Sababa 24 W. R., 293

Monvett Singh v. Juvett Kora 24 W. R., 297

258 *Disregard of*

in law Henna Lal Gora v. Kater Das Mool- 23 W. R., 65
Arvud Chutkora Chutkora 25 W. R., 60

evidence at all or which points almost exclusively

below has ostensibly based its judgment on the evi- 24 W. R., 119
dence Moor Nalimer Kora v. Kesar Dewa

Improper deal- 280
ing with evidence—In this case, departing from the

to notice facts very much in favour of the defen- 13 p. 2
dant, considered itself justified in saying that his

SPECIAL OR SECOND APPEAL

—continued

5 GROUNDS OF APPEAL—continued

"false."—*Held* that, as the Judge must have been biased by the strong opinion so formed as to the defendants' untruthfulness in dealing with the real estate, there was such a sub-
stantial error in the procedure as ought to preclude the High Court from accepting the Judge's finding as conclusive upon the point in dispute. Decree reversed, and the case sent back for fresh decision on the merits on the evidence as it stood. Hennaiah v. Kanwar Hossein I. R. 171 A. 48, referred to. 17 Cal., 253 T. R. 191 A. 48, referred to. 23 W. R., 160

254 *Error in dealing*
I. T. R., 15 Bom., 670

of the burden of proof especially in cases in which a title is asserted by a plaintiff who seeks to oust a defendant and that defendant denies the title and asserts that the plaintiff has no title at all. *Wazir Ahmad Bhai v. Arvudiah Karpur I. T. R., 13 All., 637*

255 *Suit for redemption*

title by the defendant. Upon review of the evidence the District Judge held that the plaintiff's title was not proved. *Held* that this finding which was mixed one of law and fact was a finding with which the High Court could not interfere on second appeal. When from the facts found by the lower Court the legal inference to be drawn is certain the High Court in second appeal may correct erroneous conclusions drawn by the lower Appellate Court. Where, however, the legal inference to be deduced from facts is not open to the High Court in second appeal to interfere with the findings of the lower Court. A test which often presents itself to an English lawyer is this: Would a Judge withdraw the case from a jury on the ground that there was no evidence of the question to be found upon such as he, on the other hand on certain facts being established, direct them to find in a particular manner? In either of these cases it would be open to the High Court

priority of the finding of the lower Appellate Court

SPECIAL OR SECOND APPEAL

—continued.

5. GROUNDS OF APPEAL—continued.

Appellate Court is erroneous in law because the Judge has failed to give proper effect to the documentary evidence adduced, it is necessary for the special appealant to show not only that the evidence is calculated to support certain conclusions, but that these conclusions alone flowed from it. *SHAM NARAYAN v. COURT OF WARDS*. 20 W. R., 197

267.

Findings as to genuineness of deed from copy put in evidence.—The finding of a lower Appellate Court pronouncing, on evidence, on the genuineness of a deed on the production of a copy (the original having been lost) is not open to interference in special appeal. *CHANDER BANERJEE v. DUKHINA DEBIA*. [8 W. R., 356]

268.

Findings as to genuineness of document.—A decision that a document was not genuine cannot be interfered with on special appeal. *TARA PRASUNO MOZOOMDAR v. BISHO NATH SIRCAR*. 23 W. R., 144

269.

Use of probab-ilities against direct evidence.—Where the lower Appellate Court merely on the appearance of a document discarded the evidence of witnesses who testified to the making and signing of it, the High Court reversed its decision, on the ground that probabilities which are useful as aids in considering the true value of direct evidence can seldom be safely had recourse to alone for the purpose of entirely invalidating direct evidence. *LALAH JHA v. TULSI RAMA TOOT ZURRA*. 21 W. R., 486

270.

Erroneous and unnecessary presumption of fact.—Where the Court concluded against the genuineness of a document on a presumption erroneous or one which did not necessarily arise, his decision was set aside on special appeal. *AKHOO BIRRE v. KOONJO BANERJEE LALL*. [19 W. R., 288]

271.

Comparison of signatures in unusual manner leading to erroneous conclusion.—Where the lower Appellate Court relied on a comparison between the signature in a mortgage deed and the signature in a vakalatnama, and it appeared in special appeal that there were very considerable discrepancies between the signatures, the High Court (departing from the ordinary assumption in such cases that the comparison had taken place in open Court before the parties in the usual way) concluded that the comparison had been conducted in some way which led the lower Court into error. They accordingly reversed its decision and remanded the case for re-trial. *RHOODES BIRRE v. GOBIND CHANDER ROY*. 22 W. R., 272

SPECIAL OR SECOND APPEAL

—continued.

5. GROUNDS OF APPEAL—continued.

case for re-trial. *SHIBO SOONDHARE DOSSARE v. CHANDER KANT GHOSE*. 21 W. R., 217

AMAREE BEHAREE v. HUKAREE MONDUN KURUMOKAR. [23 W. R., 87]

261.

Improper and erroneous dealing with evidence—Error in law.—The investigation of a case upon a portion of the evidence, excluding the other portion under a mis- taken impression that it was not legal evidence, but likely to produce an error in the decision of the case on its merits. The mode in which evidence is to be dealt with discussed. *MATUNRA PANDAY v. KAM RUMA DEWARI*. [3 B. L. R., A. C., 108; 11 W. R., 482]

262.

Partial consid-eration of evidence.—It is a ground for special appeal, if the Appellate Court disregards one side of a case, and turns its attention exclusively to the evidence on the other; but it is no error of law merely to pronounce no objection upon the evidence on the former side. *DEO SURUR POOR v. ALANORAD ISKATI*. 24 W. R., 300

263.

Ground for set-ting aside decision on facts.—The lower Appellate Court has quite as much authority to decide upon facts as the Court of first instance, and the High Court is not at liberty to interfere with verdicts set- ting aside judgments of the Court of first instance, simply because such judgments are more detailed or even more satisfactory on the evidence. *CHANDER ROY v. WOOLLA MOYER DEBIA*. [19 W. R., 321]

264.

Documentary evidence.—Reasons for rejecting documentary evidence.—The reasons of a Judge for not giving any weight to docu-ments offered as evidence cannot be questioned in special appeal. *MUNEE DUTT SINGH v. CAMBERN*. [11 W. R., 278]

But see *SUBRODUTY DOSSARE v. UMRIKA NUND BISWAS*. 24 W. R., 192

265.

Findings as to sufficiency of documentary evidence.—*PER BAKLEY, J.*—The omission in the first Court to enquire or specify in the judgment as to whether a potash, which is admittedly 100 years old, and which is supported by the evidence of old witnesses, comes from proper custody or not, is not a sufficient reason to invalidate the finding that the potash is proved; nor is it a defect in the investigation affecting the merits of the case which would justify the interference of the High Court in special appeal. *PER GLOVER, J.*—The question as to proper custody is not in issue, the Judge having found the potash proved by the evidence of witnesses. *BUDHIOODHARE v. GOALAM PARR*. 17 W. R., 279

266.

Error of Judge in not giving proper effect to evidence.—In order to support a contention that the judgment of the lower

SPECIAL OR SECOND APPEAL

5 GROUNDS OF APPEAL—continued.

276 *Misconstruction of document—Error on facts.*—Where the Court in recording the words of a document on which it relies puts one term for another, it is a misconstruction

incomparable with the wording of the document
KATE CHURN FATTOR v CHURN CHURN
9 W. R., 366

277 *Misconstruction of documents*—*Per ALKAM, J.*—*Semble*—That a ground of appeal to the effect that the lower Appel-
late Court has misconstrued a document is not one of
the grounds of second appeal contemplated by s. 554
of the Code of Civil Procedure. *RUPN PRAAS v.*
BAIRYAT 1. I. R., 15 ALI, 387

278 *Question of*

admission which had been wrongly understood. LATTA
IMRIT LATA v. KANORU LATTAMAR
118 W. R., 447

279. *Mistake as to meaning of evidence—Misconstruction of document.*

—The misconstruction of a document which is the
con-
spectal
1859,
se of
a mistake as to the meaning of some portion of the
evidence which is in writing, if it is connected with
other evidence affecting its construction. *NOBAY*
SHAR v. CHATTER DEBARR SIKH 18 W. R., 223

280 *Instruction and dealing with sale certificate—A judge is bound to give full effect to the terms of a sale certificate, and when he proceeds to limit the effect of that certificate by certain inferences and conclusions drawn from other documents he does that which he is not at liberty to do, and commits an error of law which it is in the power of the High Court to remedy on special appeal.* *MOONKHA HUNDKAR TOMKAR v. KAN LATA GOLAHTA* 14 W. R., 435

281. *Construction of depositions of witnesses*—The construction of the deposition of witnesses is not a question of law, and therefore not a ground of special appeal. *HIMUT AIR KHANIK v. KANAKHOLAN KHANIK* 23 W. R., 250

282 *Upholding on appeal, Misconstruction of document—Question of fact*—Where the conclusion of the lower Appellate Court rested, not only upon the contents of a document involving the question of its

283 *Upholding on appeal, Misconstruction of document—Question of fact*—Where the conclusion of the lower Appellate Court rested, not only upon the contents of a document involving the question of its

SPECIAL OR SECOND APPEAL

6. GROUNDS OF APPEAL—continued.

272. *Comparison of signatures—Credibility of receipts for*

plaintiff on the receipts with his signature to a document not in evidence in the case, and reversed the decree and dismissed the suit. *Held* that the decision
The Judge on appeal compared the signature of the plaintiff on the receipts with his signature to a document not in evidence in the case, and reversed the decree and dismissed the suit. *Held* that the decision
The Collector attested the receipts and gave a decree in favour of the plaintiff, saying that as to three of the receipts evidence had been given "which he did not believe, and that with respect to the other receipts no evidence had been offered. The Judge, on appeal, reversed the decree and gave a decree in favour of the defendant, expressing an opinion that the distrust of the evidence in support of the three receipts was without sufficient reason. *Held* that with respect to the receipts in suit of which no evidence had been offered, the plaintiff was entitled to

273. *Receipts for*

in investigation of case—In a suit for arrears of rent the defendant pleaded payment and filed receipts. The Collector attested the receipts and gave a decree in favour of the plaintiff, saying that as to three of the receipts evidence had been given "which he did not believe, and that with respect to the other receipts no evidence had been offered. The Judge, on appeal, reversed the decree and gave a decree in favour of the defendant, expressing an opinion that the distrust of the evidence in support of the three receipts was without sufficient reason. *Held* that with respect to the receipts in suit of which no evidence had been offered, the plaintiff was entitled to

274. *Misapprehension*

275. *Admission*

276. *Admission*

277. *Admission*

278. *Admission*

SPECIAL OR SECOND APPEAL

5. GROUNDS OF APPEAL—continued.

288.

Oral evidence—Difference of opinion between lower Courts as to credibility of witnesses.—Where the Courts differ as to the credibility of witnesses, such difference does not form a ground of special appeal. *SHEKHANT GHOSH v. BHUVAN CHUNDER SEN*. 24 W. R., 13

289.

Findings as to materiality of evidence or witnesses.—Though a Judge has a right to say that in the absence of a witness he considers material he cannot give the plaintiff a decree, yet where he stated that unless a certain witness (from whom the plaintiff had got a conveyance which it was necessary for him to prove) attended and gave evidence the plaintiff could have no right whatever, his decision was held to be wrong in law and was set aside on special appeal. *HAN DHUN BANERJEE v. KAM NARAIN MOOKERJEE*. 11 W. R., 311

280.

Discrepancy of witnesses as interested party.—A special appeal will not lie merely on the ground that the lower appellate Court has disbelieved a witness by reason of his being an interested person or for any other reason within its discretion. *DWARKANATH DOSS BISWAS v. MADHUN MONI CHUCKERBORTY*. 16 W. R., 292

291.

Omission to give reasons for believing witnesses disbelieved by lower Court.—The omission of a lower appellate Court to give its reasons for believing witnesses disbelieved by the first Court does not constitute a ground of special appeal. *LOKHEE MONI DOSSA v. KAKISHORE PAUL*. 4 W. R., 106

293.

Reasons for believing witnesses.—No general rule can be laid down as to when the reasons should be stated by an appellate Court for believing one set of witnesses rather than another; and the omission of a lower appellate Court to state such reasons is not a ground for special appeal. *SHUMSHOODD v. JAN MAHOMED SIKAR*. 21 W. R., 260

294.

Omission to refer to statement in judgment.—When witnesses under examination make statements which are contrary to statements previously made by them, the

SPECIAL OR SECOND APPEAL

5. GROUNDS OF APPEAL—continued.

288.

Sufficient evidence.—In a suit on a kabuliati, the Court of first instance found that the kabuliati had not been signed by the defendant, but by a third party, and that there was no evidence that such third party was authorized to sign it. The Judge on appeal reversed the decision. *It* held that the decision of the Judge holding the defendant responsible for the signature of a person of whose authority there was no evidence was erroneous in point of law, and was a ground of special appeal. *SHAM CHAND BYASAK v. BUNGO CHUNDER CHATTERJEE*

[March, 556: 2 May, 663]

Findings of fact as to a man's report.—Where the lower appellate Court finds as a fact that the a man's report is trustworthy and his map wrong, the finding cannot be interfered with by the High Court in special appeal. *SHEO DYLAL SINGH v. HODERKINSON*

24 W. R., 342

Omission to record opinion on evidence.—The omission to record an opinion on one of many items of evidence (e.g., an Amer's report) is not such an error in law as to come within the scope of the provisions for special appeals. *BUNDHO SOOKOOLAN v. JOX PROKASH SINGH*. W. R., 1864, 367

23 W. R., 250

Upholding an appeal under the Letters Patent the decision of Kaly, J., in NIAMTOOTLAL KHADIM v. HIMAT ALI KHADIM. 22 W. R., 519

288.

Entry in account book.—The improbability of plaintiff having received payment for one bill whilst another and older one remained unpaid was no reason for the Judge refusing to consider the evidence adduced by plaintiff in support of her demand, and his not having done so was held to be an error of law. So also the Judges having entirely ignored the evidence with regard to an entry in the plaintiff's day-book on which the first Court decided the case was held to be an error of law in the investigation and a proper subject for special appeal. *DARIMO DEBEE v. HURKEERH MOOKERJEE*. 18 W. R., 53

287.

Documents in property admitted.—Where a Judge is influenced in his estimate of parol testimony by the result of his consideration of documents which he ought not to have dealt with as evidence, there was held to have been no proper trial of the case. The High Court on special appeal remanded the case. *BODONATH RA-BOOR v. RUSSIOK LALL MITTER*. 9 W. R., 274

PURAN CHUNDER CHATTERJEE v. GHOSH CHUN-DR CHATTERJEE. 9 W. R., 450

SPECIAL OR SECOND APPEAL

6 GROUNDS OF APPEAL—continued.

298. *Error in admission of secondary evidence*—Whether secondary

without ■ insufficient) **[9 W. R., 517]**

Refusal to admit secondary evidence of lost deed—All that it

but allows secondary evidence to be given of the contents of the deed, it is not an error which affects the merits of the decision or is a ground for special appeal **[20 W. R., 68]**

299. *Refusal to allow additional evidence*—*Discretion of Court*.—The parties in an appeal are not entitled as of right to put in additional evidence. The Appellate Court allows additional evidence in certain cases, but a special appeal will not lie in the event of the Court refusing to allow it **[7 W. R., 489]**

[6 W. R., 429]

[7 W. R., 489]

[6 W. R., 429]

[7 W. R., 489]

[6 W. R., 429]

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SPECIAL OR SECOND APPEAL

6 GROUNDS OF APPEAL—continued.

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[6 W. R., 429]

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[7 W. R., 489]

SPECIAL, OR SECOND APPEAL
—continued.
6. OTHER ERRORS OF LAW OR PROC.

309. [I. T. R., 19 Mad., 414.
Civil Procedure Code. *BAYATI v. SHIVABHOY*
art. 169, had expired, —Held that the High Court in
second appeal had power to interfere under s. 584 (c).
the Civil Procedure Code and Limitation Act, sch. II,
appeal not presented in time without sufficient
cause for delay.—*Discretion of Judge*—Exercise of
discretion not to be interfered with. — Where an
appeal has been dismissed as barred by limitation, the
lower Court holding that there was no sufficient cause
for not presenting it within the prescribed time, the
High Court can only interfere in second appeal if
that decision is contrary to law, that is, if the lower
Court has exercised its discretion capriciously or
arbitrarily or without proper legal material to sup-
port its decision. *PAYATI v. GARVATI ROADPATI*
NAIR. I. T. R., 23 Bom., 513.

310. Interference with award
of costs.—The Court may interfere with the award
of costs on appeal. *JAYRIS BEGGAI v. ANAND HOS-*
SHIN KHAN 1 Agra, 270
311. Question of costs.—There
may be circumstances which would justify an appeal
upon a mere question of costs. *CHITRAJI alias*
KUNATH AHMED KOTA v. INDULAKH VITTHI KANHA-
MATH HARI 3 Mad., 279
312. Mode of award-
ing costs.—The question of how costs have been
awarded is not a point for special appeal. *BERA*
PENSHAD v. DOORGA PENSAD W. R., 1864, 216
313. Appeal from
portion of decree relating to costs.—Held, in con-
formity with a Full Bench ruling of the late Sudder
Court, that a special appeal lies from the order of the
lower Courts in matters relating to costs, and that
there is nothing in the law limiting or taking away
the right to appeal specially from that part of a
decree which relates to costs in any case where any
legal ground for special appeal is shown to exist.
ASSA KAY v. KASHMIRER DASS
[Agra, F. R., 90: Ed. 1874, 68.]

314. Discretion in as-
sessing costs.—Civil Procedure Code, 1859, s. 187.
—Where no appeal is made against the judgment
passed on the subject-matter of the suit, the discre-
tionary power of assessing costs given by s. 187 of
Act VIII of 1859 should not, unless in a very excep-
tional case, be interfered with by the Appellate
Court. *KUPPUSVAMATHYAN v. NANNUVAYAN*
[1 Mad., 74
315. Improper exer-
cise of discretion in awarding costs.—An improper
exercise of discretion in awarding costs against which
a regular appeal would lie is no ground for allowing
a special appeal, unless the award is contrary to some

SPECIAL OR SECOND APPEAL
—continued.

5. GROUNDS OF APPEAL—concluded.

the same evidence, though there was evidence in the
second case which was not before the lower Court on
the hearing of the first. *Held* that he should have
recorded his reasons for doing so, but that the judg-
ment would not be set aside on that ground, it not
appearing that the party taking the objection had
been prejudiced or that it had been raised before the
Subordinate Judge. *PANAYATHI SARDHAT v. KAT*
COOMAR SARDHAT 2 C. L. R., 33
304. Improper rejec-
tion of evidence.—The improper rejection of evidence
affecting the decision of the case on the merits is an
error in law which may be set aside on special appeal.
HORO CHUNDER CHOWDHRY v. GOMID CHOWDHRY
MOHTYER 17 W. R., 255
305. Rejection of
evidence which ought to have been admitted—Ground
for interference.—The fact that the Judge may have
rejected evidence which ought to have been received
and considered does not warrant the High Court in
interfering to set aside an order of such Judge.
VENKATACHALLA CHETTI v. PANAYATHAM
[3 Mad., 418]

6. OTHER ERRORS OF LAW OR PRO.

CEBUKE.

(a) APPEALS.

306. Appeal wrongly admitted
—Orders and proceedings thereon without jurisdic-
tion.—Where an appeal was allowed from an order
rejecting a review, and other acts and proceedings
took place based on such illegal order, the High
Court set aside all the proceedings in special appeal.
LEWON BIRER v. BODDHY MUNDUL
[9 W. R., 489]

307. Appeal heard
and decided without objection where no appeal lay.
—Although Act XXIII of 1861, s. 26, barred an
appeal from an order or decision passed in a suit
instituted under Act XIV of 1859, s. 15, yet where
an appeal was made in such a case, no objection taken,
and the appeal decreed, the High Court refused to
interfere, the lower Appellate Court's decree having
given the plaintiff what the first Court ought to have
given. *HURDYAT SINGH v. KUNHYA LATI*
[19 W. R., 247]

308. Appeal heard
ex-parte without respondent being aware of hearing
—Application for rehearing barred before he was
aware of decree against him—Civil Procedure Code,
ss. 560 and 584 (c)—Limitation Act, sch. II, art. 169
—Power of High Court to interfere on special
appeal.—Where an appeal was heard ex-parte by a
lower Appellate Court and the decree of the Court of
first instance reversed in the absence of the respondent,
on whom notice of appeal had not been duly served,
and who was not aware of the proceedings till after
the time for applying for a rehearing under s. 560 of

SPECIAL OR SECOND APPEAL. SPECIAL OR SECOND APPEAL.

—continued—

6 OTHER ERRORS OF LAW OR PROC.

DURD—continued

it is no good ground of special appeal that a wiset exercise of the discretion would have led to different results. In a regular appeal the District Judge, at the instance of the respondent, on 26th March called upon the appellant, who resided out of British territory, to show cause, within two days, why, under s. 44 of Act VIII of 1857, he should not furnish secu-

6 OTHER ERRORS OF LAW OR PROC.

DUNE—continued

particular law on the subject. *AMIRANNAH HAYIR-*

1111 : JAKSMAJI RUSTAJI [4 Bom., A.C., 41

DESAJI LAKHMAJI & BHAYARIDAS NAROTKIDAS [8 Bom., A.C., 100

318

case of discretion in an award costs.—There is no foundation for the opinion that an Appellate Court has no authority to interfere with the discretion of

13 Mad., 113

818

High Court's interference in special appeal. *OMKA CHAVY alias GOSAI CHANDRA ROY* special appeal. *OMKA CHAVY CHANDRA BHAKSHI* 25 W. R., 22

819 *Order in disctie tion of lower Court*—Where, in a suit for defama- tion, a decree was given for the plaintiff for nominal damages, but he was ordered to pay the defendant's costs.—*Held* that the order as to costs was in the discretion of the Court below, and therefore no special appeal would lie from such order. *The rule, as laid down in Girdhar Lal Roy v. Sundar Bih., 2 L. R., Sup. Pl., 456*, being that an order as to costs cannot be interfered with in special appeal unless it is illegal or wrong, is correct. *1 L. R., 1 Cal., 365; 25 W. R., 226*

Reversing an appeal under the Letters Patent the decision in *MOONKHARO DASH MOHODDAR v. PUTTICK PANDOR* 24 W. R., 318

(c) DISCRETION, EXERCISE OF, IN VARIOUS CLASSES

320. *Order for security for costs—Appeal struck off in default—Absence of error in law—When the Civil Procedure Code gives to a Court of regular appeal a discretionary power, and that discretionary power has been fairly exercised,*

321 *Exercise of discretion not*

Gopal Khandekar Rao v. Deokan Narayan [6 N. W., 172

legal material to support its decision. *PARTALI v. GANPATI KONDARI NAIK*. 1 L. R., 23 Bom., 613. *Execution of decrees—Discretion of Court exercising decree—Civil Procedure Code, 1859, s. 207*—It is entirely in the discretion of

SPECIAL OR SECOND APPEAL

—continued

6 OTHER ERRORS OF LAW OR PROC.

DURE—continued

important error, as the genuineness of the sanad was in no way in issue, and that the judgment must be set aside and the case remanded. *Raj Soondar Bakshji v. Karkh Peshad Hajrah* [19 W. R., 267]

340 — Decision for plaintiff on ground not alleged by him—*Civil Procedure Code, 1859, s. 340*—Error not affecting merits.

In a suit for possession of a quantity of land, where the first Court gave plaintiff a decree on the ground that he had proved title by purchase, and the lower appellate Court, in confirming the decree on the substantial issue raised, went further, and found that it was not proved by the plaintiff, who had tested his case questioned by the plaintiff, who had tested his case

341 — Decision founded on issues not raised in the suit—*Error of fact*—In a suit for the recovery of land upon an alleged lease found to not genuine, the defendants set up a sale by plaintiff's father. The lower Court found that there had been a sale in fact, but held it to be invalid according to Hindu law, as having been without the concurrence of the plaintiff's son of the vendor. Held that the validity of the sale not having been questioned by the plaintiff, who had tested his case

342 — Order directing local investigation—*Distinction of Court*—Pursuing a local investigation or not is a mere matter of discretion in which no special appeal will lie of right. *Gharan v. Lopez* [1 W. R., 141]

343 — Order as to local inquiry—*Direction of Judge*—It is within the discretion of a Judge to order or refuse a local inquiry. When, *Rajkishan Mookjee v. Huro Monah Mookjee* [5 W. R., 248]

344 — Decision on point not contested—In a suit by a talabdar, where the dispute was whether certain land which the plaintiff held as what he was entitled to hold as *khattar*, genuineness of which no question was raised, the lower appellate Court indicated that it considered the sanad not to be genuine. Held that this was an

345 — Order directing local investigation—*Distinction of Court*—Pursuing a local investigation or not is a mere matter of discretion in which no special appeal will lie of right. *Gharan v. Lopez* [1 W. R., 141]

346 — Order directing local investigation—*Distinction of Court*—Pursuing a local investigation or not is a mere matter of discretion in which no special appeal will lie of right. *Gharan v. Lopez* [1 W. R., 141]

347 — Order directing local investigation—*Distinction of Court*—Pursuing a local investigation or not is a mere matter of discretion in which no special appeal will lie of right. *Gharan v. Lopez* [1 W. R., 141]

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—continued

6. OTHER ERRORS OF LAW OR PROC.

DURE—continued

334 — *Binding of fact*—*Civil Procedure Code, 1852, s. 201*—A finding unaccompanied by the reasons for it, as required by s. 201 of the Code, is not a conclusive finding of fact binding on a Court of second appeal. *Karkh v. Karkh* [1 I. R., 8 Bom., 368]

335 — The Judge decided that the plaintiff was barred by limitation, but his judgment did not disclose the grounds on which he held that plaintiff was not entitled to deduct, in calculating the twelve years' limitation the time occupied by certain suits brought for the same property, in which he was not entitled. Held that it was no ground of special appeal that the judgment was silent on the subject of the claim to deduction, and that, whether the point was urged in the lower Court or not, the plaintiff had no ground of special appeal in respect of omission of all notice of it in the judgment. *Hameed Doss v. Mahomed Akbar* [1 Ind. Jur., O. S., 102]

336 — *Error of procedure*—*Civil Procedure Code, 1859, s. 309*—A lower Appellate Court's omission to give reasons cannot be considered a ground for special appeal when it has not produced error or defect in the decision upon the merits. Where a lower Appellate Court has omitted to state reasons, and it appears to the High Court that reasons should have been stated, the proper course is to retain the case on special appeal, but to return the proceedings and require the omission to be supplied. *Doosay Chund v. Oond Bhatt* [18 W. R., 473]

337 — Omission to state points—*18 W. R., 473*

of special appeal. *Roor Chand Ror v. Raj Karkh W. R., 1864, 98*

[4 Bom., A. C., 106, 108]

SPECIAL OR SECOND APPEAL.
—continued.
6. OTHER ERRORS OF LAW OR PROCEDURE—continued.

commission—Ground of appeal—Civil Procedure Code, s. 584.—Where a Court on the application of a party or otherwise has issued a commission for a local investigation, it is a substantial error in procedure and therefore a ground of special appeal, under s. 584 of the Code of Civil Procedure, if the Court proceeds to hear and determine the case without having the return of such commission before it. MADHO SINGH v. KASHI SINGH [T. L. R., 16 All., 342]

(g) MISTAKES.

349. *Mistake in account—Review, Application for.—A mistake of account not being an error in law or procedure is not a ground for special appeal. The remedy lies in an application for review.* RAM KANTH ROY CHOWDHURY v. KATIA MOHUN MOOKERJEE 22 W. R., 310
PROSUNNO COOMAR DUTT v. CHYTRUNO CHURN BIDYATUNKAR 25 W. R., 74

350. *Error in description of defendant as a minor—Appeal by guardian treated as appeal by minor.—The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and the lower Appellate Court refused to pass an order allowing the appeal by the father to stand as an appeal by the defendant. Held that the lower Appellate Court could, in the exercise of its discretion, allow the appeal to stand as an appeal by the defendant, but the High Court could not interfere with the order in special appeal.* GHOSH v. TARAK NATH MUKHOPADHYA [3 B. L. R., Ap., 115]

351. *Degree proceeding on mistake as to applicability of law—Mistake of Judge not affecting merits.—The Court will not interfere on special appeal with a decree proceeding on a mistake as to the applicability of a law when such error does not affect the decision of the case.* KUREKH KHAH v. MURROOZ [W. R., F. B., 16 : 1 Ind. Jur., O. S., 77
1 May, 226
S. C. JUDGMENT MOZOOMDAR v. GOOROO PERSAD ROY
MAYSH., 52
MAYSH., 270 : 2 May, 236
HASSAN CHUNDER DUTT v. PRANVATH CHOWDHURY

AKHUR ALTY v. HOSSAN ALTY [1 Ind. Jur., N. S., 101 : 5 W. R., Mis., 29

(h) MISJOINDER.

352. *Misjoinder of causes of action.—Misjoinder of causes of action is not alone a valid ground of special appeal.* SHUKKUR PAVUKH [2 N. W., 443 : AGRA, F. B., Ed. 1874, 238
T. L. R. 21 A., 39
Hearing and investigation, without awaiting return of such

SPECIAL OR SECOND APPEAL.
—continued.
6. OTHER ERRORS OF LAW OR PROCEDURE—continued.

344. *Omission to direct local investigation—Error in law.—It is not an error in law in the investigation of a case where the Courts below do not direct a local investigation of their own motion when they are not asked by the parties to do so.* MACDONALD v. MINAR ROY [B. L. R., Sup. Vol., 358 : 3 W. R., Act X, 153

345. *Local inquiry in suit as to enhancement of rent.—Discretion of Judge to order local inquiry in suit to contest notice of enhancement.—Order of Judge.—In a suit brought to contest a notice of enhancement, a Judge is not bound to order a local inquiry, merely because he incidentally states such an inquiry to be the best source from which to obtain reliable evidence upon the point of rates. Nor will a special appeal lie on the subject of the Judge exercising a discretion as to ordering or not ordering such an inquiry.* HERRA-TOTT SEAT v. GUNADHUR SUNNAPUTTY [W. R., F. B., 19 : 1 Ind. Jur., O. S., 8
1 May, 229
GUNADHUR SUNNAPUTTY v. HERRA-TOTT SEAT

346. *Irregularity in local inquiry—Civil Procedure Code, 1859, s. 180—Appointment of improper officer.—Though s. 180, Act VIII of 1859, makes it imperative on a Court to employ in the first instance the regular officer of the Court to hold a local inquiry, non-compliance with this requirement of law is not per se a ground of special appeal.* RAMDOOS KOONDU v. NIKANTO DUTT [W. R., 6
1 May, 229
GUNADHUR SUNNAPUTTY v. HERRA-TOTT SEAT

347. *Disregard of report on local investigation—Disputed boundary—Grounds of appeal—Civil Procedure Code (Act XIV of 1882), s. 584.—The Court of first instance accepted as correct a boundary line mapped by an Amee, dividing the estates of the opposite parties. The lower Appellate Court, after remanding the suit for a second local investigation and report, determined to disregard the second return, which differed from the first, and affirmed the judgment. Both parties having appealed, the High Court, dissatisfied as to this disregard of the second return, decided to hear the appeal as a regular one, examined the evidence, and reversed the judgment of the Court below. Held by the Privy Council that to have dealt with the appeal as a regular appeal was in excess of the Court's jurisdiction; and that it had no power to hear the appeal as a second appeal, there not having been in the proceedings below any error or defect, within the meaning of s. 584 of the Civil Procedure Code, which contained the only grounds of second appeal.* LUKHI NARAIN JAGDEB v. JODU NATH DEO [T. L. R., 21 Cal., 504
T. R., 21 A., 39
Hearing and investigation, without awaiting return of such

SPECIAL OR SECOND APPEAL
—continued.
6 OTHER ERRORS OF LAW OR PROCEDURE—continued.
DURE—continued.

of the deceased, whenever A applied to be sub-

354. —
1 W. R., 114
for special appeal. DASHIN KAMRY & SAMIRAL
HARRIS

355. —
10 W. R., 279
MAR DUTT
ground of special appeal. MANOHAR HOSSEIN &
POTAM

(4) PARTIES
356. —
20 W. R., 147
Adding parties.—*Discretion*
of Court.—The exercise of the discretion a Court
had to add parties under s. 73, Act VIII of 1859,
could not be interfered with on special appeal unless
it was manifestly unjust and wrong.

357. —
1 W. R., 228
ROMAN MONDUL MONTAN & SHAN CHAND GHOSE
Error in add-
ing parties as plaintiffs.—*Civil Procedure Code, 1877,*
s. 591.—In a suit for rent where the defendants
alleged that a person not on the record had a joint in-
terest with the plaintiff in the property in respect of
which the rent was due, and where the plaintiff dis-
puted this and the third person was added by the
Court as a complainant.—*Held* this would be an error
or defect to which objection could be taken in the
memorandum of appeal under s. 591 of Act X of
1877. GOODES SANO & PAKHAT SANO

358. —
1 L. R., 7 Cal., 148
—*Unappealed*
order.—*Civil Procedure Code, 1892, s. 591—Order*
making person respondent.—S. 591 of the Code
enables the Court, when dealing with an appeal
from a decree, to deal with any question which may
arise as to any error, defect, or irregularity in any
order affecting the decision of the case, though an
appeal from a such order might have been and has not
been taken.

359. —
10 W. R., 279
MAR DUTT
ground of special appeal. MANOHAR HOSSEIN &
POTAM

360. —
10 W. R., 127
Objection of non-jourder
of parties.—*Error concerning wrong decision*—The
objection of non-jourder of parties cannot be made
as ground of special appeal unless the want of parties
has caused a wrong decision to be given. HERRA
LAL CHOWDHRY & BISHOO LALL CHOWDHRY

361. —
10 W. R., 108; 8 B. L. R., 628 note
CHANDRA DUTT
Misjoinder of parties—

362. —
10 W. R., 72
GURU KAT & SAKHNA BAHWA
Death of party.—*Plaint*
in name of dead person.—*Irregularity*—
Where a plaintiff was died in the name of a deceased
party of whose death the person filing the plaint was
ignorant, and the heir and representative of the
deceased was at once put upon the record as plaintiff
in his room, the irregularity (if any) was held in
special appeal to be immaterial and not such as the
Court would take notice of. GODDARD CHANDRA
DUTT & COURT OF WARD

363. —
10 W. R., 127
Objection of non-jourder
of parties.—*Error concerning wrong decision*—The
objection of non-jourder of parties cannot be made
as ground of special appeal unless the want of parties
has caused a wrong decision to be given. HERRA
LAL CHOWDHRY & BISHOO LALL CHOWDHRY

364. —
10 W. R., 127
Objection of non-jourder
of parties.—*Error concerning wrong decision*—The
objection of non-jourder of parties cannot be made
as ground of special appeal unless the want of parties
has caused a wrong decision to be given. HERRA
LAL CHOWDHRY & BISHOO LALL CHOWDHRY

365. —
10 W. R., 127
Objection of non-jourder
of parties.—*Error concerning wrong decision*—The
objection of non-jourder of parties cannot be made
as ground of special appeal unless the want of parties
has caused a wrong decision to be given. HERRA
LAL CHOWDHRY & BISHOO LALL CHOWDHRY

366. —
10 W. R., 127
Objection of non-jourder
of parties.—*Error concerning wrong decision*—The
objection of non-jourder of parties cannot be made
as ground of special appeal unless the want of parties
has caused a wrong decision to be given. HERRA
LAL CHOWDHRY & BISHOO LALL CHOWDHRY

367. —
10 W. R., 127
Objection of non-jourder
of parties.—*Error concerning wrong decision*—The
objection of non-jourder of parties cannot be made
as ground of special appeal unless the want of parties
has caused a wrong decision to be given. HERRA
LAL CHOWDHRY & BISHOO LALL CHOWDHRY

368. —
10 W. R., 127
Objection of non-jourder
of parties.—*Error concerning wrong decision*—The
objection of non-jourder of parties cannot be made
as ground of special appeal unless the want of parties
has caused a wrong decision to be given. HERRA
LAL CHOWDHRY & BISHOO LALL CHOWDHRY

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6. OTHER ERRORS OF LAW OR PROCEDURE—continued.

the case on his own file, and ordering the Munsif, after taking the necessary evidence and deciding any issue fixed by him, to send up his finding with the evidence to his Court, and then proceeding to try the case as an appeal.—*Held* that the irregularity was not one which affected the merits of the case or the jurisdiction of the Court, so as to justify interference with the Judge's decision in special appeal. *GUNGA MOHAR DOSSER v. ISSRA CHANDER SHANA*. [17 W. R., 465]

369. *Error in trial of case.*—In a suit for a potah, the Deputy Collector having failed to take the evidence of certain witnesses produced by the plaintiff for examination, the lower Appellate Court remanded the case with a view to the evidence being taken. This was done, and the case was re-tried by the Deputy Collector, who again dismissed the plaintiff. On appeal the decision was reversed. *Held* that the Judge may have been so far in error, in that, while remanding the case, he did not direct the lower Court to send the case back to him with the additional evidence, yet, as the error did not interfere with the merits of the case or the jurisdiction of the Court (the evidence having been before the Judge in appeal), it would not warrant interference with his decision in special appeal. *MAHOMED PURMANICK v. LATI MAHOMED PURMANICK*. 13 W. R., 284

370. *Improper dealing with remanded case—Re-hearing and decision of case on remand for particular purpose.*—The Court of Appeal directed a remand to try the issue on a plea of payment. The lower Court determined the whole case over again. *Held* that it had no power to do more than try the issue referred, and that, on this ground, its decision might be set aside on special appeal. *MOTIAN ALLEE v. SHAW BUKHA*. [Marsh., 603]

(k) REVIEW.

371. *Order granting review—Order admitting review to correct error or omission.*—Where a lower Court with materials before it comes to the conclusion that a review which has been applied for is necessary to correct an evident error or omission or for the ends of justice, and grants the application accordingly, the order admitting the review is not open to be questioned in special appeal. *SARABJAN BIR v. SURDUR AIT*. 22 W. R., 288

But when a review is admitted on no grounds, the order is open to question. *KOTAKMOODBERN MUNDUT v. HERBUN MUNDUT*. 24 W. R., 186

372. *Admission of review on improper grounds.*—Where a review has been granted without proper ground, the High Court on special appeal can set aside the order and restore the former judgment. *CHUNDER CHURN AVGRO-DANY v. LOODUNNAI DEB*. 25 W. R., 324

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6. OTHER ERRORS OF LAW OR PROCEDURE—continued.

364. *Order of remand irregularly made—Error in law—Civil Procedure Code, 1859, s. 351.*—It is an error in law for a lower Appellate Court to remand a case except in accordance with s. 351 of the Civil Procedure Code. A special appeal will lie against a decree remanding a suit. *NARAYAN NARAYAN v. KANAKSHET GOVINDSHET* [6 Bom., A. C., 156]

365. *Remand of case under s. 351, Civil Procedure Code, 1859—Irregular procedure.*—A special appeal does not lie merely because the lower Appellate Court remanded a case under s. 351 of Act VIII of 1859, instead of calling for additional evidence under s. 355, without proof that the special appellant has been prejudiced. *Now-COMRER MUNDUT v. MOOKTA BIRER*

[2 W. R., 181] Or instead of framing issues on which the case might be tried. *JUGOONDOO HALDAR v. SHRE-NARAYAN MITTER*. 20 W. R., 188

366. *Improper remand under s. 351, Civil Procedure Code, 1859—Error in procedure.*—Where a lower Appellate Court, instead of keeping a case on its file and either calling for further evidence or remitting issues under s. 354 of Act VIII of 1859, improperly remanded it under s. 351, but its decision on the merits was not prejudiced by the error in procedure, the High Court refused to interfere in special appeal. *BURDO PERSHAD v. GOLAB KHAN*. 6 N. W., 101

367. *Civil Procedure Code, 1859, s. 351.*—It does not necessarily follow, when a lower Appellate Court remands a suit under s. 351 of Act VIII of 1859 instead of s. 354, that the order of remand is void and reversible in special appeal. Where, however, a lower Appellate Court, directing certain persons to be made parties to the suit, erroneously remanded it under s. 351 for the trial of a particular issue, *Held* that, if the case went back under s. 351, inasmuch as the error, by restricting the Court of first instance to that particular issue and thus leaving the finding of the lower Appellate Court on other portions of the case final, might have produced error in the lower Appellate Court's decision on the merits, the decision should be reversed and the lower Appellate Court directed to remand the case under s. 354. *GURJAT SINGH v. BIRAT SINGH*. 6 N. W., 114

368. *Irregularity in remanding case—Civil Procedure Code, 1859, ss. 352, 354.*—Where a Judge, instead of remanding a case under s. 352 of Act VIII of 1859, when the Munsif had not disposed of the case upon any preliminary point, ought to have disposed of it under s. 354, keeping

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6 OTHER ERRORS OF LAW OR PROCEDURE—continued

378. Grant of review on improper or insufficient grounds—Where a Court has granted a review, the High Court will not interfere on appeal, though the grounds for granting the review were improper or insufficient. *GRANVILLE AIRBORNE & PAPER MANUFACTURING CO. v. AIRBORNE & PAPER MANUFACTURING CO.* [1 Mad, 184]

See *FRIZZELL HOSKINS & KNIGHT v. KNIGHT* [3 W. M., 268]

374. Reviewing predecessor's judgment and reversing it on insufficient grounds—Where a District Judge, as the lower

23 W. R., 276 *DOSS & PHOTAS CHANDER SEN*

10 W. R., 184 *GHOSE & GAISH CHANDER ROY CHOWDHURY*

10 W. R., 174 *MAHARAJA OF BURDWAY NARAYAN DOSS & MIN*

382. Dismissal of suit on refusal of plaintiff to answer questions—Civil Procedure Code, 1859, s. 170—The High Court will not interfere on appeal with the decree of the lower Court dismissing a plaintiff's suit (under s. 170, Act VIII of 1859), on the ground of his refusing to answer a question material to the case when duly required to do so. *Semle*—It might be otherwise had plaintiff since decreed endeavoured to purge his contempt. *JESHTA RAMJI SHETI & AYAKHAR* 3 Mad., 298

383. Improper procedure in summoning party as witness—Civil Procedure Code, 1859, s. 170—When a plaintiff was summoned as a witness and did not attend, and the Court, instead of enforcing his attendance or proceeding to pass a decree against him under s. 170, gave the plaintiff a modified decree.—*Held* that the lower Appellate Court, instead of reversing the decision and dismissing the plaintiff's claim on the ground of non attendance, should have again summoned the plaintiff and then acted under s. 170. *KISTO COOMAR CHOWDHURY & GOBIND COOMAR* [W. R., 1884, 133]

384. Improper interference on appeal with order of lower Court on refusal of party to attend as witness—Civil Procedure Code, 1859, s. 170—The first Court having decreed against the special respondent on the ground

377. Error in valuation—Error in valuation of Court—An error of valuation, which does not affect the jurisdiction of the Court in which a suit is tried, and does not lead to a defect in the decision on the merits, is not sufficient ground for interference in special appeal. *KISTO CHAND MOHOMAD & DWARKA NATH BISWAS* 10 W. R., 32

378. Increase of costs to defendant—*Semle*—That an error in the valuation of the plaintiff's claim, on account of which

379. Dismissal of

SPECIAL OR SECOND APPEAL —continued.

6. OTHER ERRORS OF LAW OR PROCEDURE—continued.

385. Omission of witness to appear—*Auction-purchase at sale in execution*.—In a case wherein lands were sold in execution, notwithstanding intervention, under s. 214, Code of Civil Procedure, by a plaintiff who claimed under a libba, which was held by the lower Courts to be false, the High Court refused to interfere merely because the auction-purchaser had not appeared to give evidence. *Amoor Itay v. Ameer Ali*. 18 W. R., 422.

386. Refusal of Munsif to the respondent witness.—The refusal of a Munsif to the respondent witness is no ground for special appeal. *Phan Kriato Deo v. Kari Deo*. 7 W. R., 460.

387. Refusal to allow witness to be called—*Discretion of Court*.—It is in the discretion of a Court of first instance, after the plaintiff's case is closed, to allow him to call further witnesses. There is no right of special appeal upon the point. *Rakhat Doss Mowd v. Phorav Chunder Hazari*. 12 W. R., 455.

388. Omission to record evidence of witnesses.—To enable an appellant in special appeal to succeed on the ground that the depositions of witnesses were not recorded, he must show that application was duly made that they should not be summoned, or that, being present, application was duly made for their examination. *Sunm Kae v. Uthman Kae*. 2 N. W., 209.

389. Refusal of lower Courts to send back commission after its return unexecuted.—Where a commission to examine a witness on behalf of the defendant had been returned unexecuted, and the defendant's petition to have it sent a second time was refused both by the first Court and the lower Appellate Court, the High Court in special appeal remanded the case for the issue of the commission, holding that the lower Appellate Court's refusal had been based on insufficient grounds. *Jhotes Singh v. Govat Singh*. 23 W. R., 457.

390. Adjournment for attendance of witnesses—*Civil Procedure Code (Act XIV of 1882), s. 156—Discretion, Exercise of—Witnesses, Attendance of—Power of High Court on second appeal*. On the day fixed for the hearing of a suit the defendant applied for process against certain of his witnesses who had been summoned, but who had failed to attend, asking for an adjournment to obtain their attendance. This application was refused, and the case was proceeded with. The

6. OTHER ERRORS OF LAW OR PROCEDURE—continued.

391. Final order in regular appeal—*Civil Procedure Code, 1859, ss. 322, 373 in force*.—The term "decisions passed in regular appeal" in s. 372, Act VIII of 1859, might embrace orders rejecting or dismissing an appeal, although such orders were passed before an appeal was heard on the merits, and might not necessitate the preparation of a decree. *Govat Khandra Rao v. Deokere Nandun*. 6 N. W., 173.

392. Appeal dismissed on default of appearance—*Refusal of postponement*.—Where an appellant is refused postponement, and his appeal is dismissed in his absence, the case must be looked upon as one of default, even though the Judge looked into the facts and found the appeal was not to be upheld. The appellant in such a case might apply for a rehearing or for a review of judgment, but is not entitled to a special appeal. *Deo Missen v. Ahmed Hossain*. 15 W. R., 143.

393. Refusal to give decrees on terms—*Discretion of Court*.—Though it would have been more satisfactory if the lower Appellate Court, instead of declining to give plaintiffs a decree for possession of certain mortgaged lands on the ground that the sum tendered by them was insufficient to liquidate the mortgage-debt, had made a decree in favour of plaintiffs, such sum as should be found due, yet the plaintiffs had no strict right to such a decree, and it cannot be said that the lower Appellate Court had committed an error in refusing to make such a decree. *Boistur Doss Koonoo v. Huroo Narain Hatdar*. 17 W. R., 408.

SPECIAL OR SECOND APPEAL —continued.

6. OTHER ERRORS OF LAW OR PROCEDURE—continued.

394. Omission of witness to appear—*Auction-purchase at sale in execution*.—In a case wherein lands were sold in execution, notwithstanding intervention, under s. 214, Code of Civil Procedure, by a plaintiff who claimed under a libba, which was held by the lower Courts to be false, the High Court refused to interfere merely because the auction-purchaser had not appeared to give evidence. *Amoor Itay v. Ameer Ali*. 18 W. R., 422.

395. Refusal of Munsif to the respondent witness.—The refusal of a Munsif to the respondent witness is no ground for special appeal. *Phan Kriato Deo v. Kari Deo*. 7 W. R., 460.

396. Refusal to allow witness to be called—*Discretion of Court*.—It is in the discretion of a Court of first instance, after the plaintiff's case is closed, to allow him to call further witnesses. There is no right of special appeal upon the point. *Rakhat Doss Mowd v. Phorav Chunder Hazari*. 12 W. R., 455.

397. Omission to record evidence of witnesses.—To enable an appellant in special appeal to succeed on the ground that the depositions of witnesses were not recorded, he must show that application was duly made that they should not be summoned, or that, being present, application was duly made for their examination. *Sunm Kae v. Uthman Kae*. 2 N. W., 209.

398. Refusal of lower Courts to send back commission after its return unexecuted.—Where a commission to examine a witness on behalf of the defendant had been returned unexecuted, and the defendant's petition to have it sent a second time was refused both by the first Court and the lower Appellate Court, the High Court in special appeal remanded the case for the issue of the commission, holding that the lower Appellate Court's refusal had been based on insufficient grounds. *Jhotes Singh v. Govat Singh*. 23 W. R., 457.

399. Adjournment for attendance of witnesses—*Civil Procedure Code (Act XIV of 1882), s. 156—Discretion, Exercise of—Witnesses, Attendance of—Power of High Court on second appeal*. On the day fixed for the hearing of a suit the defendant applied for process against certain of his witnesses who had been summoned, but who had failed to attend, asking for an adjournment to obtain their attendance. This application was refused, and the case was proceeded with. The

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396. Filing memorandum of appeal.—Copy of decree—Civil Procedure Code, 1877, ss 551 and 557.—The Code of Civil Procedure, Act X of 1877, does not require the appellant in second appeal to file a copy of the decree of the Original Court with the memorandum of appeal. *Prabhu Singh v. Vansatram Khatiyar* [I. L. R., 4 Mad., 419]

[W. H., F. B., 146] On due cause being shown for delay *PLOWEST v. KOOTVA HOSSEIN* [Agre, F. B., 100: Ed 1874, 75]

merely on the ground of non joinder, the District Judge should not record any findings in the appeal. *Jan's* *Patwar on the merits of the case, and, if he does so, such findings will, on second appeal to the High Court, be expunged from the record.* *NADA LAL Bhat v. BHOWANI LAL* [I. L. R., 11 Calo., 644]

403. Objections by respondent—*Civil Procedure Code, 1859, s 349 (1887, s 661)*—S 348, Act VIII of 1859, was not applicable to special as to regular appeals *NARAYAN AYTHA v. LAKSHMI AYTHA* [I Mad., 216]

404. Changing issues on special appeal—A party was not allowed on special appeal to go behind the issues by which he was content to abide in the lower Court *ANAND MOHINI v. SOMASOBTAN* [I Mad., 102]

405. Direction of trial of issues—*Right of respondent to take objection—Civil Procedure Code, 1859, s 372, and Act XVII of 1877*

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6. OTHER ERRORS OF LAW OR PROCEDURE—concluded.

396. Irregularity in exercise of jurisdiction—*Absence of error in decision*—A Collector's decree, which is right on the merits, cannot be set aside on appeal, merely because of an irregularity in the exercise of the jurisdiction which he had in the case *CHANDRA KANT CHAKRAVARTY v. RILAS* [W. H., F. B., 146]

397. Refusal to examine plaintiff's title on erroneous ground—*Civil Procedure Code, 1859, s 372, and a special appeal will be allowed* *SATAM v. INAYATULLAH BHAEE* [I Mad., 28]

398. Failure to obtain certificate of administration after adjournment of case for that purpose—*Dismissal of case—Debt due to deceased person—Suit by legal representative*

399. Failure to obtain certificate of administration after adjournment of case for that purpose—*Dismissal of case—Debt due to deceased person—Suit by legal representative*

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the deceased owner claimed to remain in possession of it in virtue of her right to maintenance. At the hearing of the second appeal, a claim was made on her behalf not merely to maintenance, but to a share in the property as mother of the last owner. The point had not been taken in the lower Courts, nor was it one of the grounds of appeal. *Held* that it could not be taken for the first time in second appeal. It set up a new right differing in kind from that asserted throughout the trial, and not differing merely in degree, as was the case in *Nagesh v. Gurusao, I. T. R., 17 Bom., 303*. *RACHAWA v. SHIVAYOGARA, I. T. R., 18 Bom., 679*

413. New point—Discretion of Court.—On second appeal the appellant should not be allowed to raise an entirely new point if it is one for the right determination of which it is necessary to go into evidence which has not been produced in the lower Courts, or unless it is a pure point of law going to the question of the jurisdiction of the lower Courts and capable of being determined without the consideration of any evidence other than that on the record, and even if it falls within the above exception, it is purely discretionary with the Court whether to consider it or not. *RAJES CHAND AVDHIKARI v. ANANDA CHANDRA BHUTTACHARJEE, I. T. R., 14 Cal., 586*

414. Objection that mesne profits ought to have been settled in execution and that no suit lies—Suit for recovery of mesne profits from person who has taken possession under a decree which is subsequently reversed on appeal—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 244.—A landlord sued his tenant for arrears of rent, and obtained a decree for a certain amount and a declaration that, if the amount were not paid within fifteen days, the tenant should be ejected under s. 52, Act VIII of 1869. The amount was not paid, and the landlord executed the decree and obtained possession. The tenant appealed and succeeded in getting the decree set aside, and the amount found due from him for arrears by the first Court was reduced, and a decree made directing that, if the reduced amount were not paid within fifteen days, he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree. It was contended on second appeal that the suit would not lie, as the matter might have been determined in the execution department under s. 244 of the Civil Procedure Code. *Held* that, as the suit was instituted in the Munsif's Court, and the Munsif, under the circumstances, would have had to determine the matter in the execution department, there was at most only an error of procedure and no exercise of jurisdiction by the Munsif, which he did not possess, and that, upon the

1861, s. 25.—Where an issue has been directed, and the finding and evidence returned, a special appellant cannot take an objection going to the merits which otherwise would not properly be open upon special appeal. S. 25 of Act XXIII of 1861 gives no rights inconsistent with s. 372 of Act VIII of 1859. *NILAYATOH v. VENKATACHALAM MUDALI, 1 Mad., 250*

406. Omission to determine material issue—Civil Procedure Code, 1877, s. 565, Applicability of.—Where a Court of first appeal omits to determine a material issue of fact, the High Court as a Court of second appeal is not competent, under s. 565 of the Civil Procedure Code, to determine such issue itself, but should refer it for determination to the Court of first appeal. *SHRO RATAN v. LAXMI KVAR, I. T. R., 5 All., 14*

407. Payment of stamp duty where not tendered in Court below.—Where an appellant has not tendered the stamp duty and held to be insufficiently stamped, the High Court will not allow him to do so in special appeal. *RAJ KRISHNA GOPAL v. VITHAI SHIVAJI, 10 Bom., 441*

408. Ground taken for first time on appeal—Ground arising out of facts alleged and admitted.—In special appeal a new ground may be taken if it manifestly arises out of the facts alleged and admitted, whether pressed or not before the lower Appellate Court. *KALIMOHAN CHATTERJEE v. KALI KRISHNA ROY CHOWDHRY, 12 B. L. R., App., 39; 11 W. R., 183*

409. Plea taken for first time on appeal—Facts stated in plaint necessary to support it.—A plea may be taken in special appeal though not set out in the plaint, if the plaintiff did set out all the facts necessary to support the plea, and there was no omission calculated to mislead the Court. *JUDOOBHAI MUTLIK v. KALEE KRISHNA TARGHE, 22 W. R., 73*

410. Objection taken for first time in special appeal.—Where in a suit under the Madras Local Boards Act in the Courts of first instance and first appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27, *Held* that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit. *RESIDENT, TAVUKH BOARD, SYAAGANGA v. NABAYANAN, I. T. R., 16 Mad., 317*

411. New point raised in second appeal—Question of law.—The High Court will allow, on second appeal, a new point to be raised for the first time, provided it is purely a question of law arising on the findings of the Courts below, and not affected by any facts outside those findings. *NAGESH I. T. R., 17 Bom., 303*

412. Point of law raised for first time in second appeal.—In a suit by a mortgagee for possession of the mortgaged land, the mortgagee

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and under the circumstances did not think it necessary to enter into it. *Am Kishen Upadhyay v. Durga Upadhyay*, 1 I. R., 18 All, 660, approved.

[1 I. R., 16 All, 123] *Amjad Ali v. Wazir Hussain*

Court, not alluded to in the lower Appellate Court. *Lalla Gowanji Lakh Lakshmi v. Court of Wards* [17 W. R., 214]

not raised before the Court on a previous occasion, when it passed an order of remand. *Darbara Daria v. Mirkosen Singh Deo* 16 W. R., 180

423. —Setting up new case.—Please and objections raised for first time in special appeal. —Parties are not entitled in special appeal to set up a new case, involving an argument entirely different from that raised in the Court below, and a state of facts entirely inconsistent with their statements there. *Bhuresh Lal v. Koriadri Ahir* 22 W. R., 553

424. —Raising new issues.—Changing original allegations.—A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Court below, and to raise altogether a new issue. *Shri Das Narayan Singh v. Bhagwan Dutt* [3 B. L. R., App., 16; 11 W. R., 10]

425. —Changing ground of action.—A plaintiff suing for redemption on the ground of holding in right of dower, cannot in special appeal claim to redeem on the ground of being her to the mortgagee. *Ranokan v. Ruztoonissa* [W. R., 1864, 326]

on that ground in the Court below. *Karnanath Noreodhar v. Saroda Chowdhary* [1 W. R., 283]

self-acquired property, he cannot in special appeal

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authority of the decision in *Purnanarayan Keshad Narain Singh v. Janki Kooer*, 19 W. R., 90, this *Held* also that the point being one that was not raised in the pleadings or before either of the lower Courts, and being a point which went exclusively to the jurisdiction of the Court, it could not be raised on second appeal. *Azizuddin Hossain v. Kama* 1 I. R., 14 Cal, 605

416. —Objection to parties.—Non-joinder of parties.—*Held* by *Murugesami Aiyar*, and *Bhagat, JJ.* in *Bhagat, J.* dissenting, that the objection as to non-joinder of parties is not essential, but merely formal, and might be raised at any time when it is first taken on second appeal. *Moti Das Kuri v. Krishnan* 1 I. R., 10 Mad, 323

417. —Objection taken for first time on appeal.—Necessity of notice to quit.—Objection as to want of parties.—Practice.—Suit for specific performance.—An objection as to the necessity of notice to quit is one which may be taken

of practice. *Dodd v. Madhav Rao Narayan Gadga* 1 I. R., 18 Bom, 110

417. —Where an objection was taken in the first Court that a notice to quit

418. —Question of limitation.—Where the question of limitation was raised for the first time in second appeal.—*Held* that it could not be decided in favour of the plaintiff. *Shirava v. Doo* 1 I. R., 11 Bom, 114

419. —Plea raised at the hearing which was not taken in the memorandum of appeal.—Practice.—A plea that the memorandum of appeal in the lower Appellate Court was insufficiently stamped, and that such deficiency was not made good within the period of limitation, is not a plea which can be raised at the hearing of a second appeal, when it has not been taken in the memorandum of appeal. *Ras Kishen Upadhyay v. Durga Upadhyay* 420.

420. —Civil Procedure

random of appeal to the effect that the respondents

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a Judge a ground of appeal to the High Court, he ought always to draw the Judge's attention to that matter, either by presenting a petition or otherwise, so that a proper record may be at once made of the facts which he desires to establish in appeal. *Raj Koonar Khyuro Dass v. Sonatun Dass Pora-Maniok*. 3 C. L. R., 23.

433. Appeal to Chief Court, Punjab—*Civil Procedure Code, 1882, s. 584—Questions of fact.*—An appeal from an Appellate Court to the Chief Court of the Punjab is not limited, as such appeals are under the Civil Procedure Code, 1882, s. 584; but evidence may be dealt with, and questions of fact are open for decision. *Budha Mal v. Bhagwan Das*. [I. L. R., 18 Cal., 302]

434. Treatment by High Court of finding of fact—*Suit for wrongful dismissal.*—The finding of the lower Courts upon a question of whether there was sufficient ground for the dismissal of a pagoda hereditary servant by the dhamakars must be treated by the High Court on special appeal as a conclusive finding upon a matter of fact, unless it be supported by no evidence whatever. *Kaistwasamy Patrachary v. Govatun Rangachary*. 4 Mad., 63.

435. Power of High Court as to facts—*Appeal from order of remand—Civil Procedure Code, 1877, s. 562, and s. 588, cl. 28.*—On an appeal from an order under s. 562 of the Civil Procedure Code remanding the case, the High Court cannot consider the facts on which the lower Appellate Court passed the order of remand. All that it can do under s. 588, cl. 28, is to consider whether, on the findings of fact by the lower Appellate Court, that Court was right in remanding the case. *Nomolath Phaniot v. Ganes Narayan Moonshee*. [I. L. R., 8 Cal., 674]

436. Effect on special appeal of recording further evidence by Appellate Court—*Right to appeal on facts.*—A special appeal is not converted into a regular appeal because the Judge, sitting as a Court of appeal, recorded further evidence under s. 356, Act VIII of 1859, or pronounced a judgment on the evidence recorded, which had not been considered by the first Court as described in s. 353. *Lalia Herba Lai v. Gobur Bynath Pershad*. 4 W. R., 43.

437. *Civil Procedure Code, 1882, s. 568—Right to go into facts on appeal.*—The provision in s. 568 of Act XIV of 1882 as to an Appellate Court recording its reasons for admitting additional evidence is directory merely, and not imperative. Where the first Court of appeal has admitted additional evidence, the hearing in the second Court of appeal will not be treated as a first appeal, so as to allow the pleaders to go into the facts. *Gopal Singh v. Jhakarai Rai*. [I. L. R., 12 Cal., 37]

ask for a declaration of his title to a moiety of the property as a member of a joint Hindu family. *Dhur Kistoo Roy v. Huru Chunder Roy*. [5 W. R., 197]

428. *Claim through widow in right of dower—Allegation of right by inheritance.*—The defendants in the Court below unsuccessfully claimed to retain possession of some land under a kobsala from a Mahomedan widow, who was alleged by them to have been absolutely entitled thereto under her right of dower. *Held* that the defendants could not, in special appeal, set up for the first time that the widow was entitled to a share by inheritance, if not as denudatun, no case of that kind having been made in the Courts below, and no inquiry asked for into the state of the family, or whether any and what share came to the widow. *Ambika Chaban Dutt v. Nadir Hossain*. [2 B. L. R., A. C., 258]

S. C. Umrika Churn Dutt v. Nadir Hossain. [11 W. R., 133]

429. Rules for special appeal—*Sufficiency of evidence on the record, Question as to.*—A case which is tried in special appeal is subject to all rules provided for regular appeals so far as the same may be applicable. The question whether evidence on the record is legally or reasonably sufficient to support the findings of the lower Appellate Court may be dealt with in special appeal without a remand or re-hearing. *Joy Raj Roy v. Omrao Roy*. 12 W. R., 431.

430. Omission after favourable finding of law to appeal against adverse finding of fact in lower Court—*Power of High Court reversing judgment on law to decide on fact without remand.*—The Court of first instance found against the defendant on a matter of fact, but decreed in his favour on a point of law; and on appeal by the plaintiff the defendant omitted to file a memorandum of objections to the adverse finding of fact of the Court of first instance. The Appellate Court, without going into the question of fact, confirmed the decree of the Court of first instance on the point of law. *Held* that the High Court, in special appeal, could under the circumstances give judgment in favour of the plaintiff without a remand. *Wajgan Kar v. Waderkar*. 5 Bom., A. C., 194.

431. Power of High Court to draw inference of fact from evidence.—The High Court is not at liberty in a special appeal to draw any inference of fact from the evidence in the case. *Dwarakadas Lalubhai v. Adan Ali Surjan Ali*. 3 Bom., A. C., 1.

432. Mode of obtaining record of facts where ground of appeal is misconduct of Judge in not hearing a pleader.—The Court on special appeal is bound to take the facts from the Judge's statement. Where, therefore, a party desires or intends to make the misconduct of

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be reversed upon special appeal as being a finding without any evidence in support of it. *Held, contra*, by BAXTER, J., that, under s 372, Act VIII of 1859,

448. *Civil Procedure Code, 1882, ss 565, 566—Determination of case by High Court—In a suit for pre-emption, based on thewajib-namars of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village. The lower Appellate Court, dissenting from*

and no error in remanding the case under a bill of the Code, that his order must so far be set aside, and that he should proceed under a bill or a bill might

In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs

parties All the evidence necessary to the determination of the case was on the record. Held per curiam, *O'J.*, and *O'Donnell* and *Tynan*, *JJ.*

already on the record, and that, in each case, the question need not be referred to the Court of first appeal. *Hal Kishen v. Jasoda Kaur*, 1 L. R. 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890,

438. _____ Right to exa-

under s 355, Civil Procedure Code, 1859—The High Court is not entitled in special appeal to examine the evidence of a witness summoned by the lower Appellate Court under Act VIII of 1859, s 355, which was not before the first Court, nor treat the appeal as a regular appeal.

438 — Right to go behind order

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review, and, not having done so, he was not entitled to ask the Court to go behind that order and consider whether it was wrong with reference to the latter case.

See BAKKETAHBAI v. DANDODHAR NARBHAYAK
16 Bom. A. C. 146

440 — Objection to previous order in the case to be taken in memorandum of appeal—Civil Procedure Code, ss 562, 591—Unless such objection is taken in his memorandum of

441. — Order adding defendant.

Civil Procedure Code (1882), s 32 Where an order adding a defendant under s 32 of the Code of Civil Procedure was not appealed against and no objection was taken in the memorandum of appeal from the decree in the suit in which it was passed, an oral objection taken in appeal to such order was disallowed. *Tilak Bai Singh v Chakravarti*

[T. L. R. 20 All, 370]

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449. Power of High Court to

vary order for execution—*Giving relief not asked for.*—The High Court in second appeal should not vary the order for execution which had been passed in such a way as to give the decree-holder relief for which he did not ask. *PROFAR CHUNDRA Doss v. PRADE CHOWDHARI* [I. L. R., 8 Cal., 174; 9 C. I. R., 453]

450.

Decrees made without jurisdiction—*Suit cognizable by Small Cause Court—Order sending case on terms to Small Cause Court.*—Where the decisions of the lower Courts were found, in special appeal, to have been without jurisdiction, and the suit to be cognizable by the Small Cause Court, the High Court made an order sending the plaint to the Small Cause Court for trial, upon the appellant (plaintiff) paying within three months all the costs of the litigation. *DHUV MONBE CHOWDHARI v. WOOMA CHURN ROY* [23 W. R., 445]

451.

Objections under s. 567 raised for the first time in second appeal by plaintiffs—*Practice—Remand by lower Appellate Court under Civil Procedure Code, s. 566.*—Objections which might have been, but were not, made under s. 567 of the Civil Procedure Code in a lower Appellate Court to the findings on remand of the Court of first instance, cannot be raised for the first time as grounds of second appeal from the lower Appellate Court's decree. *MUHAMMAD ABDUL HAI v. SHRO BISHAL RAI* [I. L. R., 10 All., 28]

452.

Filing one appeal from four separate decrees—*Amendment of appeal.*—In execution of a decree in a District Munsif's Court, certain property having been sold, a balance, after satisfying the decree, remained in favour of the judgment-debtor X. After the date of sale, but before the whole of the purchase-money had been paid into Court, X applied to the Court by petition, praying that the amount due to him might be paid to A, to whom, he alleged, he had assigned it. Before any order was made on this petition, B, C, D, and E, in execution of separate decrees against X, attached the sum in Court. The District Munsif ordered that B, C, D, and E should be paid before A. A brought a suit against B, C, D, and E in another District Munsif's Court for a declaration that he was entitled to the money and to set aside the said order. The Munsif set aside the order and declared the plaintiff to be entitled to the amount. B, C, D, and E severally appealed against this decree, and the District Court passed a decree in each appeal, dismissing A's suit. A presented one second appeal, making B, C, D, and E parties thereto, that A was bound to file a separate appeal against each of the decrees passed by the District Court; he was, however, allowed by the Court to amend his second appeal and file three more second appeals. *CHATHU v. KUNSHAMAD . I. L. R., 11 Mad., 280*

SPECIAL OR SECOND APPEAL

7. PROCEDURE IN SPECIAL APPEAL

—continued.

I. L. R., 7 All., 765, referred to. *DROKHIAN v. BANSI* [I. L. R., 8 All., 172]

444.

Second appeal from order of remand—*Civil Procedure Code, s. 562—Effect of findings of facts and findings of law.*—On an appeal from an order of remand under s. 562 of the Code of Civil Procedure, the High Court is bound to accept the findings of fact of the Court which made the remand, that Court being a Court of first appeal, provided that there is evidence to support them; but where the High Court has decided a question of law in an appeal from an order under s. 562 of the Code, that decision of the question of law will be final for all purposes in the suit and in any appeal which may subsequently be made to the High Court. *DEO KRISHEN v. BANSI, I. L. R., 8 All., 172*, referred to. *GAVRI SHANKAR v. KARIMA BIBI* [I. L. R., 15 All., 413]

445.

Appeal from order of an Appellate Court—*Civil Procedure Code (1882), ss. 562, 585—Findings of fact of the Court below.*—In an appeal from an order of an Appellate Court the High Court is bound to accept, as in a second appeal from a decree, the findings of fact arrived at by the lower Appellate Court. *GAVRI SHANKAR v. KARIMA BIBI, I. L. R., 15 All., 413*, approved. *TIKA RAM v. SHAMA CHAMAN* [I. L. R., 20 All., 42]

446.

Determination of issues of fact by High Court—*Civil Procedure Code, ss. 566, 567, 587.*—*Held* by the Full Bench that s. 587 of the Civil Procedure Code does not make ss. 565 and 566 applicable to second appeals, so as to enable the High Court, in cases where the lower Appellate Court has omitted to frame or try any issue or to determine any essential question of fact, to itself determine the same upon the evidence on the record, but the High Court in such cases must remit issues for trial to the lower Appellate Court. *BALKRISHEN v. JASODA KUMAR, I. L. R., 7 All., 765*, and *DEOKRISHEN v. BANSI, I. L. R., 8 All., 172*, overruled on this point. *GHANDHARI LAL v. CHAWHARD* [I. L. R., 9 All., 147]

447.

Power of High Court to look into ground for admitting appeal after time.—It is competent to the High Court in special appeal to look into the grounds which a Judge has given for admitting an appeal after the lapse of the prescribed time. On appeal to the High Court against the decree of a subordinate Court, everything which preceded that decree as an act of Court is open to revision. *MOWRI BEWA v. SUBENDRA NATH ROY* [2 B. L. R., A. C., 184; 10 W. R., 178]

448.

L. in action Act (XV of 1877), s. 5, sch. I.—The High Court, sitting on second appeal, has power to look into the grounds which a Judge has given for admitting an appeal after the lapse of the period allowed by the Limitation Act. *MOWRI BEWA v. SUBENDRA NATH ROY, 2 B. L. R., A. C., 184*, followed. *CHUNDRA Doss v. BOSHON LAL BOOKARI* [I. L. R., 8 Cal., 251; 11 C. I. R., 177]

SPECIAL OR SECOND APPEAL

—continued—

7. PROCEDURE IN SPECIAL APPEAL

—continued—

457. —Change in nature of suit
v. NAKAYALAB KANDAKA I. T. R., 13 Bom., 424
time in second appeal, as it was an objection affect-

453. —Change of pleading in
appeal.—*Practice*—The plaintiff, alleging himself
to be joint in estate with A, his grandnephew, sued
for an absolute gift of the house in suit made
by A in favour of his wife, as also the subsequent
sale of the house by the wife to the defendant. The
Joint Appellate Court found that A was separate

454. —Omission to examine wit-
nesses. I. T. R., 10 All., 495
from that which was originally put forward and
tried, the appeal should be dismissed. *Kamta v*

455. —Defective judgment of
Appellate Court, reversing *Munshi's* deci-

456. —Objection to jurisdiction
on ground of wrong valuation of suit.—*The High*
Court held that it was not at liberty to entertain an
objection taken for the first time on second appeal
under a 4% of the Code of Civil Procedure as to
misjoinder of causes of action was raised for the
first time on appeal, the High Court on second
appeal declined to entertain it. *Dhondiba Kishanji,*
Patil v. Ramchandra Bhograt, I. T. R., 11 Bom.,
554, followed. NAWA v. GURJAB SINGH

457. —Objection to jurisdiction
on ground of wrong valuation of suit.—*The High*

458. —Powers of Appellate Court
—*Question of fact*—*Civil Procedure Code, 1882,*
as 594, 595.—The limitation to the power of the
Appellate Court to examine wit-
nesses was alleged. One of the members of the
division was in possession of the property to
which the sale-deed related did not join in executing
it. Held that the plaintiffs, having failed to prove
division as alleged, were not entitled in second appeal
to have their suit treated as a suit for partition.
I. T. R., 12 Mad., 292

459. —Objection taken for first
time on appeal.—*Aljoinder of causes of action*
under a 4% of the Code of Civil Procedure as to
misjoinder of causes of action was raised for the
first time on appeal, the High Court on second
appeal declined to entertain it. *Dhondiba Kishanji,*
Patil v. Ramchandra Bhograt, I. T. R., 11 Bom.,
554, followed. NAWA v. GURJAB SINGH

460. —Objection to jurisdiction
on ground of wrong valuation of suit.—*The High*

461. —Objection taken for first
time in second appeal that preliminary
objection having been raised, in second appeal, that
the Court had no jurisdiction to entertain the suit,
as the plaintiffs had not previously asked the
Collector to place them on the register.—*Held that*

462. —Objection to jurisdiction
on ground of wrong valuation of suit.—*The High*

463. —Objection to jurisdiction
on ground of wrong valuation of suit.—*The High*

SPECIAL OR SECOND APPEAL

—continued.

7. PROCEDURE IN SPECIAL APPEAL

—continued.

this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. That objection, however, being taken for the first time in second appeal, was disallowed.

Bhikaji Bai v. Randu

[I. L. R., 19 Bom., 43]

462. Objection based on point of law.—An objection based upon a point of law may be made in second appeal, provided it does not involve the taking of any additional evidence on matters of disputed facts.

Gavdara v. Girnar-lara

[I. L. R., 19 Bom., 331]

463. Objection taken on appeal from final decree to order of remand and not appealed from.—The contention that a map was admissible in evidence was held to be open to the appellant, on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible.

Savitri v. Ramji, I. L. R., 14 Bom., 282, and Rameshwar Singh v. Sheodan Singh, I. L. R., 12 All., 510, followed.

Hazari v. Jagat Chandra Dutta

[I. L. R., 23 Cal., 385]

464. Offer to pay stamp duty and penalty in second appeal not allowed.

An instrument which is not duly stamped will not be admitted on second appeal on payment of stamp and penalty when there is no evidence that the stamp and penalty were tendered and refused on the hearing of the first appeal.

Ramkrishna Gopal v. Vilva Shetty, 10 Bom., 441, referred to.

Lakshmandas Raghunathdas v. Raghav Dadas-Bax

[I. L. R., 20 Bom., 791]

465. Wrong issue framed by lower Court.—Finding in judgment on the point raised by correct issue—Ground for remand.—Where the lower Appellate Court framed a wrong issue for decision, but it appeared from its judgment that there was a finding on the point which would have been raised if the correct issue had been framed, the High Court in second appeal refused to remand the case for a new finding on that issue.

Ramohanra v. Ganesh Appaji Chavhan

[I. L. R., 21 Bom., 325]

466. Amendment of plaint by putting new plaint on the record on second appeal.—Where plaintiffs had sued as co-defendants by impleading under a will which provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, which adoption had been made,—*Held*, under the circumstances of the case, the plaint should be amended on second appeal by substituting the adopted son as plaintiff with one of the original plaintiffs as his next friend.

Seshamma v. Chennappa

[I. L. R., 20 Mad., 467]

467. Apportionment of mortgage-debt—Question of apportionment first raised

SPECIAL OR SECOND APPEAL

—concluded.

7. PROCEDURE IN SPECIAL APPEAL

—concluded.

in second appeal—*Practice*.—A plaintiff, who had purchased part of certain mortgaged property and sued for possession, obtained a decree ordering that he should get possession on payment of the whole mortgage-debt. He did not in the lower Courts ask that the mortgage-debt should be apportioned, but did so in second appeal to the High Court. Under the circumstances, the High Court refused to interfere with the decree. The plaintiff had a remedy by suit for contribution.

Yadav Baiji Surxaray v. Arbo

[I. L. R., 21 Bom., 567]

468. Appeal to lower Appellate Court by respondent in High Court insufficiently stamped.—*Court Fees Act (VII of 1870), s. 10*.—Where it was discovered in second appeal in the High Court that the respondent, when appellant in the lower Appellate Court, had not paid a sufficient court-fee on his memorandum of appeal in that Court and up to the date of the hearing of the appeal in the High Court, though called upon to do so, had not made good the deficiency, it was held that the proper procedure was not to dismiss the respondent's appeal to the lower Appellate Court under s. 10 of the Court Fees Act, but to stay the issuing of the decree, if any, of the High Court in favour of the respondent until such time as the additional court-fee due by him might be paid.

Narain Singh v. Chaturbhut Singh

[I. L. R., 20 All., 362]

469. Objection as to improper admission of document in evidence.—An objection that a document which *per se* is not admissible in evidence has been improperly admitted in second appeal cannot be entertained for the first time in second appeal.

Miller v. Madho Das, I. L. R., 19 All., 76; I. R., 23 I. A., 106, distinguished.

Gandha Chandra Ganguli v. Rajendra Nath Chatterjee

[I. C. W. N., 530]

SPECIAL COMMISSIONER.

Register prepared by—

See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—REGISTERS.

[I. L. R., 22 Cal., 112]

SPECIAL COMMISSIONERS.

Jurisdiction—Beng. Reg. III of 1828—Release of resumed lands—Mesne profits—In 1855 the Privy Council decided against the right of the Bengal Government to resume and re-assess the ghatali lands in the zamindari of Kurnool.

In 1860 the Sudder Court, acting as Special Commissioners under Regulation III of 1828, at the instance of the zamindar, directed the release of the resumed lands, but did not decide as to the right to the mesne profits which the Government had received from the ghatalis during the period of resumption, deeming this question beyond their competency as Special

SPECIFIC PERFORMANCE—continued.

1. GENERAL CASES—continued.
RAM TUNOO KOONDOO v. MUTTIOR DOSSAB
 [14 W. R., 338]

3. Readiness to carry out agreement.—One who asks the Court for a decree that he is willing and able to carry it out in all its material parts so far as he is concerned, and also that no act of his own in relation to the agreement has in any material degree diminished his opponent. He cannot select one part of the agreement for breach and carry out the entire of his own part of the contract before he can call upon his adversary, through the instrumentality of the Court, to specially execute the latter part of the agreement. **VISHVAMATH AITAYAKAM v. BAPU NARAYAN**
 1 Bom., 262

4. Absence of delay in coming before the Court.—Parties seeking specific performance of a contract should come to the Court for relief within a reasonable time. **SAM v. APPUNDI**
 18 Mad., 75

5. Right to damages.—A suit for specific performance of a contract to sell land will not lie if the plaintiff neglects to enforce his rights for a long time (in this case three years) after his rights under the contract for sale accrued, and if he does not act up to a condition precedent to the sale to him. If he has any claim at all, it would be for damages against the person breaking the contract for loss sustained by the non-fulfilment thereof. **PURBAAG SINGH v. KHERR SINGH**
 8 W. R., 280

6. Right to specific performance—Lapse of time—Agreement to compensate for mesne profits due—Surrender of land charges.—The result of a long-pending litigation was that the defendants were directed to pay wasilaf for certain lands which they had possessed under an invalid lakhiraj claim. They subsequently entered into an agreed that, if they defaulted in rent, or if the lands became khas of the zamindar, or were by any means to be alienated, the defendants would point out the lands, or, on failure to do this, would pay damages for the loss of the same. Held that lapse of time and surrender of the lands were no impediment to the Court granting relief to the plaintiff in the shape of a decree for specific performance. **PROTAP CHANDER SINGH v. GOOROO DOSS ROY. PROTAP CHANDER SINGH v. CHUNDER COOMAR ROY**
 [W. R., 1864, 76]

7. Delay in bringing the suit—Specific Relief Act, s. 22.—Joiner of a person not a party to the contract of which specific performance is sought.—A plaintiff sued on the 28th February 1881 for specific performance of a contract entered into on the 1st March 1878 by defendant No. 1, and joined in that suit as a defendant a third person, who alleged that he was the owner of the property, the subject of the contract, seeking to obtain possession and other relief as against such third

SPECIFIC PERFORMANCE—continued.

See PARTIES—PARTIES TO SUITS—SPECIFIC PERFORMANCE.
1. T. R., 18 Mad., 415
2 C. W. N., 42
1. T. R., 19 Mad., 211
1. T. R., 22 Bom., 46

See REGISTRATION ACT, s. 48.
1. T. R., 13 Mad., 324
1. T. R., 6 Cal., 534
1. T. R., 10 Cal., 710
1. T. R., 27 Cal., 468
See REGISTRATION ACT, 1877, s. 49.
1. B. L. R., F. B., 58
1. T. R., 12 Mad., 505
1. T. R., 13 Mad., 308
1. T. R., 14 Mad., 55
See CASES UNDER REGISTRATION ACT, 1877, s. 77 (1866, s. 83).
1. T. R., 1 All., 555
2 B. L. R., F. C., 111
See VENDOR AND PURCHASER—BILLS OF SALE
2 B. L. R., F. C., 111
See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
1. T. R., 17 Cal., 919
See VENDOR AND PURCHASER—PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER
15 W. R., 44
1. T. R., 24 Cal., 897
1. T. R., 21 Bom., 827
See VENDOR AND PURCHASER—TIME.
1. T. R., 15 Bom., 657

tion.—of agreement to refer to arbitra-

See CONTRACT ACT, s. 28.
1. T. R., 1 Cal., 466

of contract to give in marriage.
See INDICTION—UNDER CIVIL PROCEDURE CODES
1. T. R., 1 Cal., 74

1. GENERAL CASES.

1. Remedies for breach of contract—Suit for damages.—A party failing to perform his contract may be sued, at pleasure of the other party, either for specific performance or for damages. **MUNNEE DUTT SINGH v. CAMRABHAT**
[12 W. R., 149]

2. Requisites to entitle party to specific performance—Ability of plaintiff to perform his part of agreement—Absence of default.
—A Court of equity will not decree specific execution of an agreement in favour of a party who is not competent to perform his part of the agreement. To entitle a party to specific performance, he must show that there has been no default on his part, and that he has taken all proper steps towards performance on his own part. BUNSEEDHUR MUTTIOR v. CAL-OUTTA AUCTION COMPANY
 1 Hyde, 45

SPECIFIC PERFORMANCE—continued.

1. GENERAL CASES—continued.

11. Joint contractes

performances. *Savur Danlav v. Mahanav.*
TAKHISA HIRI I. T. R., 24 Cal., 832

12. Discretion of Court

13. Provisions—Liberty
to apply—Relief after judgment—Damages—
Review—Alternative relief.—On the 27th April
1886, a plaintiff brought a suit praying for specific
performance of a contract, or in the alternative for
1886 obtained
December 1886
of the defen-
contract, and he
thereupon, on the 13th April 1887, applied to the
Court
of
in
for damages, when assessed, might be entered up
Held that he was entitled to ask for such relief.
PEASIVANAR DASARE v. HARI CHANAN MOUDAR
CHOWDHRY I. T. R., 16 Cal., 211

2. SPECIAL CASES

14. Agreement to purchase and
payment of part of purchase money—Right
of purchaser.—When there is an agreement to sell
and a part of the consideration money has been re-
ceived, the stipulating purchaser is entitled to specific
performance on paying down the rest of the said
money. *Sunir Kishan Doss v. Abood Sonman*
CHOWDHRY I. T. R., 103
But see *Ramtooo Sonman Sibar v. Gora*
CHOWDHRY SONMAN SIBAR I. T. R., 84

15. Contract in respect of ad-
justment subsequent to decree—Act XVIII

of 1861, s. 11.—A suit lay for specific performance
of a contract in respect of an adjustment subsequent
to, and for property beyond, the decree, notwithstanding
the decree, which applied only
to subject-matters relating to the decree
LOONDA BUNIA v. MADHVA CHANDER BUNIA
I. T. R., 118

SPECIFIC PERFORMANCE—continued.

1. GENERAL CASES—continued.

person, stating that he was a demandor of defendant,
No 1. On second appeal such third person contended
that the discretion given to the Court under s. 32

Act, yet the point not having been taken in the
Courts below, and there being nothing on the record
applicable to suits of this nature had been dis-
regarded in the Courts below, the objection ought not
under the circumstances to be allowed to prevail in
second appeal. *Mokund Lal v. Chotal Lal.*
I. T. R., 10 Cal., 1061

portion of agreement.—*Per PORTER, J.*—It is of
the essence of specific performance that part only of
an agreement should not be performed. *Cutts v.*
BROWN I. T. R., 8 Cal., 328
S. C. in lower Court *BROWN v. CUTTS*
[6 C. L. R., 487
and on appeal *Cutts v. Brown*
[7 C. L. R., 171

8. Specific performance

14 W. R., O. C., 16

192. For specific performance of a contract and pay
preliminary to a decree under Act VIII of 1859,

are only two classes of cases in which specific
performance of an agreement to enter into a partner-
ship has been decreed first, where the parties have
agreed to execute some formal instrument which
would confer rights that would not exist unless it was

be specifically performed, is made merely as the
foundation of a decree for an account. *Vinay-*
CHALA NATAN v. KANSAVANI NAYAKAN
[1 Mad., 321

SPECIFIC PERFORMANCE—continued.

2. SPECIAL CASES—continued.

16. Re-sale on purchase-money

is fixed.—When the purchaser of an estate paid earnest-money, and no time was fixed for the payment of the balance, and the vendor re-sold the property within a week.—*Held* that the vendor was bound to have waited a reasonable period; that the second purchaser took nothing; and that the first purchaser was entitled to a decree for specific performance. *MITHUN ALI v. SURE SHAW SINGH* [W. R., 1864, 281]

17.

—*Agreement to exchange land*—*Remedy of seller on refusal to give land.*—Where a piece of land was sold in consideration of receiving in exchange another piece of land which was not given,—*Held* that the seller's remedy, having regard to the terms of the contract made, was not by a suit to get back the land sold, but by a suit for damages for breach of contract, or by a suit for the specific performance of the contract or so much of it as was left unperformed. *MAHIE ALI v. GOVERNMENT* [3 Agre, 394]

18.—*Contract for lands for which others were to be exchanged—Suit for damages.*—Where plaintiff had contracted with defendant to purchase from him a share of certain landed estates, excluding from the contract certain land in those estates situated within a defined boundary, defendant binding himself to make over to plaintiff other lands in exchange,—*Held* that, if defendant failed to make over the lands last mentioned, plaintiff might sue him for specific performance or for damages, but could not sue for the excepted lands. *KISHORE DEBIA v. JUDGNATH AGARJEE* [9 W. R., 269]

19.—*Refusal to act wholly on deed of partition—Suit for rights as they existed before deed.*—Where a partition deed has been made and partly acted upon, and nothing is asserted against it in the way of undue influence,—*Held* that the proper course for the plaintiff was to sue to enforce performance, and not for her rights as they may have existed previously. *BHOWANEE KOONWER v. THAKOR DASS* [2 Agre, 277]

20.—*Agreement to re-unite after partition—Absence of money consideration.*—Certain partitioners applied for a butwara under the provisions of Regulation XIX of 1814. At the time of the butwara, it was stipulated between the partitioners of 6 and 7 annas shares that, in the event of a particular village falling by division wholly to either of them, they would re-unite and hold the 13 annas share joint as before. One party having resiled from this agreement, it was held that the other party was entitled to sue for specific performance, and such a suit would lie only in the Civil Court. *Held* that the absence of mention of any money consideration in the agreement was no bar to its being enforced, as the parties thereto had waived all objection on the score of the particular village named, or any other, falling

SPECIFIC PERFORMANCE—continued.

2. SPECIAL CASES—continued.

21. Contract for appointment

of arbitrators under Land Acquisition Act. —In the matter of land acquisition proceedings under Act VI of 1857 a notice was, on the 28th of November, served upon the defendants, signed by the Collector, stating that he had appointed an arbitrator on behalf of Government, and requiring the defendants to appoint a second arbitrator to determine the amount of compensation for the land (describing it) required by the B. B. and C. I. Railway Company. The defendants' secretary wrote in reply that the defendants had appointed an arbitrator on their behalf to determine the amount of compensation for their land required for the B. B. and C. I. Railway Company. *Seemle*—That a contract was entered into by the last-mentioned notice and letter of reply to it, of which specific performance could be enforced. *KHARSHEDJI NASARVAJI CAWA v. ROBERTS* OF STATE FOR INDIA. 5 Bom., O. C., 97

22.—*Agreement for renewal of lease—Agreement by husband alone—Non-conurrence of mortgage.*—Immovable property situated in the Island of Bombay was conveyed in 1859 to A and his wife (Paris), their heirs, executors, administrators, and assigns, and was subsequently mortgaged by A and his wife, but the mortgagee did not enter into possession. In 1861 A alone entered into an agreement with the plaintiff to give them a lease of that property for five years, the plaintiff being willing to accept that lease with such title as A could confer. *Held* that, notwithstanding the non-conurrence of the mortgagee and of A's wife, A must specifically perform his contract. The concurrence of the mortgagee could not prevent the right of the plaintiff to specific performance by A of the agreement, because A should either himself redeem the mortgage or permit the plaintiff to do so. *NAORAJI BERAJI v. ROBERTS*. 4 Bom., O. C., 1

23.—*Contract requiring registration—Failure to register—Unregistered document.*—The plaintiff contracted with the defendant for the purchase of a piece of land, and paid him part of the purchase-money, it being agreed that the balance should be paid after registration of the bill of sale. The defendant kept the document with him, but failed to get it registered. In a suit by the plaintiff to enforce specific performance,—*Held* the suit would lie. *THIRUVA SUNDARI v. KASIK CHANDRA KANUNGI* [6 B. L. R., Ap., 184; 15 W. R., 189]

See RANJANLATA v. SARJITLATA KAGORI [1 B. L. R., F. B., 58; 10 W. R., F. B., 51]

TUJISI SAHU v. MANABRO DAS [2 B. L. R., A. C., 105; 10 W. R., 483]

PAT CHAND SAHU v. LAKHBER SINGH DAS [9 B. L. R., 433; 14 Moore's I. A., 129]

PARBHUTAM HAZRAN v. ROBINSON [3 B. L. R., Ap., 49; 11 W. R., 398]

SPECIAL PERFORMANCE—continued

24 — Unregistered contract—
Agreement—The plaintiff lent defendant Rs20,000, and received a document in the following terms,

"I, **CHITTA**, of the village of **CHITTA**, in the taluk of **CHITTA**, do hereby agree to pay to **CHITTA** the sum of Rs20,000, and to pay interest at 10 per cent per annum."

25 — **CHITTA** v. **CHITTA**, 11 W. R., 520.
The plaintiff agreed to grant two mokurari leases of certain properties upon certain terms to **CHITTA**, and thereupon executed two mokurari leases in favour of **CHITTA** which

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27 — Agreement for mutual redemption—
Two brothers, **A** and **B**, in 1861 agreed together that part of their house should be divided

SPECIAL PERFORMANCE—continued

24 — Unregistered contract—
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27 — Agreement for mutual redemption—
Two brothers, **A** and **B**, in 1861 agreed together that part of their house should be divided

SPECIAL CASES—continued.

2. SPECIAL CASES—continued.

between husband and wife (Armenian Christians) in the nature of a family compromise respecting the wife's separate property. In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement. *Held*, under the circumstances, that that fact, even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity. *Held* also that, if the property said to have been concealed by the husband had been purchased by him out of moneys belonging to the wife's separate estate which was clothed with a trust for the children of the marriage, the wife's remedy was to enforce her own and children's rights by bill to compel a settlement of any property improperly withheld by the husband at the date of the execution of the agreement. *GEORGE v. COCHRANE* [8 Moore's L. A., 275. 4 W. R., P. C., 66.]

32. Contract—Disability to con-

tract—Temporary disability of zamindar to contract. *Act VI of 1876 (Chutia Nagpore Kumbhwer Estates Act)*, amended by *Act V of 1884—Effect of continuance of transactions after the release of his estate from management under that Act.*—It is competent to a person, who has been, but is no longer, in a state of disability, to take up and carry on transactions commenced while he was under disability in such a way as to bind himself as to the whole. He may be bound by a contract, of which the terms are to be ascertained by what passed while he was disabled from contracting. The defendant's ancestral zamindari was placed under management by an order made under s. 2 of Act VI of 1876, and he became incapable of contracting in reference to it. He, however, agreed with the plaintiff that the latter should advance money on mortgage, and take a lease of part of the estate. Afterwards by an order, whether well founded or not, at all events effectively made, under s. 12 as amended by Act V of 1884, he was restored to the possession of his estate, again acquiring the right to contract about it. He carried on the transaction with the plaintiff, retaining the benefit of money paid by him, but in the end not completing. *Held* that he was bound by the contract, though its terms were to be ascertained by what had passed while he was disabled from contracting, and that specific performance could be decreed against him. Whether his entering into the contract was against the policy of the Act, and whether the order under s. 12 had, or had not, been made on good grounds, did not affect the question. *GEORGE v. UDOR ADITYA DAB*. [I. L. R., 17 Cal., 223. T. R., 16 I. A., 221.]

33. Transfer of Property Act, 1882, s. 83—*Civil Procedure Code*, s. 375.—A sum of money having been deposited in Court under the Transfer of Property Act, s. 83, by a vendee of the mortgagee, the mortgagee refused to accept it in discharge of his mortgage except on the terms that the depositor should convey to him part of the

SPECIAL CASES—continued.

2. SPECIAL CASES—continued.

for building stores, for garden, for orchard, for road-making, and for other uses." The potbah, besides the above, contained the following, as translated: "You will build a factory according to any plan you choose, and possess the same. Within that aforesaid mouzah we will not give settlement to anybody. If you take possession, according to your requirements, of extra land over and above this potbah, we shall settle such land with you at a proper rate. Thereat we shall make no objection." The lessee, after being in possession for some years under the potbah, assigned it to the plaintiffs, who afterwards took possession of the whole of the extra land, and demanded a potbah therefor from the defendants, and made a contract advantageous to themselves to sell it to third persons. The defendants refused to grant them a potbah. In a suit for specific performance, *Held* in the High Court that where a contract is made to sell land at a fair valuation, and there is no difficulty in ascertaining what a fair valuation would be, the Court will take the usual means of ascertaining it, and decree performance of the contract accordingly. But when, having regard to the peculiar character of the property, as in the case of land supposed to contain coal, or valuable minerals, the value of the land must be to a great extent a matter of guess and speculation, the Court will not decree specific performance, as it has no means of ascertaining by the ordinary methods what price the plaintiff should pay. *Held* by the Privy Council, on the construction of the potbah, that if the lessee, or his assigns, had required additional land for the purpose of carrying out the objects for which the potbah was granted, then the lessors would have been bound to settle so much of the adjoining land with them as might have been necessary for such requirements. *Held* also that the plaintiffs, the assignees, were not entitled to compel the defendants to grant them a potbah of the extra land, even at a reasonable rate, merely for the purpose of selling it. *Semble*—In a suit for specific performance of an agreement to sell land, the fact that on account of the extraordinary character of the property, as its containing coal or other valuable minerals, there is considerable difficulty in fixing a reasonable rate for it, is not a sufficient reason for refusing a decree. *NEW BERRHOOD COAL COMPANY v. BUTABAK MIHATA* [I. L. R., 5 Cal., 932. T. R., 7 I. A., 107.]

30. Lease savouring of champagne—Loan of money to carry on litigation.—Specific performance decreed of a lease, though the lease formed part of an arrangement whereby, as a consideration for the lease, the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence legal proceedings against the then tenant of the subject-matter of the intended lease. *PIVCHA-KUTRI CHEETI v. KAMATIA NAYAKKAN* [I Mad., 153.]

31. Compromise made under alleged concealment of fact—Husband and wife—Armenian Christians.—Specific performance decreed of an agreement in the English form made

SPECIAL CASES—continued

the 6th of January 1888 the Collector of Bareilly substituted a suit for specific performance of the

JUDICIAL PERFORMANCE—continued

the mortgagee was entitled to a decree for specific performance of the agreement to convey "A."

1. I. R. 13 Mad, 316

34. — **Revenue interest, Sale**

Purchase money less than market value of reversion—**Sit 31 Vict, 1**—**Indagante con** sideration—The rule observed in England until the passing of Stat 31 Vict c 4 that specific performance of an agreement to sell a reversionary interest should not be decreed where the purchase money was less than the market value of the reversion.—**Held** not to be the rule in India **Giribai v. Barai**

KARNAT SHASTRI NAGARKAR

[1. I. R., 17 Bom, 333

Relief

in aid of both means of knowledge, though their relative legal positions were subsequently discovered to be different from what they had supposed at the time—**A**, a large landed proprietor, died without issue in 1867. His widow **G** held possession of the estates down to her death in 1878

son, one **A. K.**

authorities?

the property left by **A** and **A**'s son **C**, claiming as a wife's son of **A**, being a widow, sold a portion of the property in

in the suit **The second suit against A. K. was**

instituted in May 1878 by **S** and others the defendants, appellants in this present suit, who claimed

title as the nearest relatives of the deceased **N**. In each of these two suits the plaintiff or plaintiffs

were successful. In each the defendant appealed

against **C** and **A** asking for a declaration that they were entitled to succeed to the property of the

Co. 1. I. R. 11

1883

1883

1883

Suit to enforce betrothal of marriage—Suit for damages—The plaintiff, on behalf of her infant son, sued the father and guardian of **M. B to recover possession of **M. B.**, alleging that **M. B** had been betrothed to her son, and that, under the Hindu law, betrothal was the same as marriage, and could not be repudiated, and that the defendant had on demand refused to give up**

40

S. C. GURNOT NARAI SINGH v. RAJAN KUMAR

GURNOT NARAI SINGH . 1. I. R., 1 Cal, 74

would give specific performance in the matter of binding irrevocable contract of which the Court

of betrothal does not, by Hindu law, amount to a damages for breach of the contract. The ceremony

marriage will not lie the remedy in an action for betrothal—**Per Gloster, J.**—**A** suit

Ceremonies of betrothal—Hindu law—

1 Bom, 10, C. 122

of betrothal. Utkar Kirta v. Nairdas Narayan-

has been betrothed. It will, however, award damages against the father for breach by him of the contract

his daughter with a person to whom the daughter

entitled to specific performance or to an injunction against the further breach of the agreement. **See**

1 W. R., 303

UPPOONISA BEGUN v. STEWART

1 W. R., 303

UPPOONISA BEGUN v. STEWART

1 W. R., 303

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UPPOONISA BEGUN v. STEWART

SPECIAL CASES—continued.

2. SPECIAL CASES—continued.

having executed in their favour and delivered to them a bond the consideration for which was money due to them for rent of land and on a former bond, had received it back for registration, and, refusing to register it, had retained it, sued the defendants to have a similar bond executed and registered. *Per Maj. MOOD, J.*—That it was doubtful whether the suit could be regarded as a suit for specific performance of a contract, and whether the only remedy open to the plaintiffs was not a suit for the money. It was only on the hypothesis that the mere writing of the original bond, in the absence of registration and final delivery, did not amount to a performance of the contract, that the suit was entertainable at all. That, assuming the suit to be one for specific performance of a contract, the plaintiffs were not entitled to the specific relief which they sought, since they could obtain their full remedy by suing for the money in respect of which the fresh bond was sought to be executed; and they had failed to prove the exact terms of the original bond. Observations on the nature of the evidence required to prove a contract of which specific performance is sought. *Per STRAY, C. J.*—That the suit was bad in form and substance, and there was no ground for the remedy by specific performance of a contract. If the alleged bond were in existence, a suit simply and directly for the recovery of the money claimed by the plaintiffs would have sufficed, for in such a suit facts relating to the loss or concealment of, the bond might have been proved, and under the circumstances secondary evidence at least of the terms of the bond might have been admissible, or the plaintiffs might have found themselves in a position to make out their claim by other evidence; but if the plaintiffs considered it material to their case to have their claim on the bond, the loss or destruction of which could not be doubted, their proper course of proceeding was by a suit to restore the terms of the lost bond, or, as it was said in Courts of equity in England, by suit to obtain the benefit of the lost deed or instrument; and that, if the suit could be taken to be one according to such a remedy, it contained no sufficient materials to warrant it being held that the bond was of the tenor and in the terms alleged by the plaintiffs. *MAJ. RAM v. PRAG DAT . I. L. R., 5 All., 44*

45. Contract for sale and purchase—*Proposal made in letters—Earnest-money—The defendant in the name of his wife wrote to the plaintiffs a letter the material portions of which was as follows: "The value of your house, No. 10, Rutton Mistry's Lane, has been fixed through the broker at Rs. 13,125; agreeing to that value I write this letter. Please come over to the house of my attorney between 3 and 4 this day with the title-deeds of the house, and receive the earnest. There shall be no doing otherwise." The plaintiffs through their manager wrote in answer to the defendants' wife: "You having agreed to purchase our house for Rs. 13,125 have sent a letter through the broker, and were agreeable to it, and we will be present between 3 and 4 this day at your attorney's and receive the earnest." The plaintiffs and defendants*

SPECIAL CASES—continued.

2. SPECIAL CASES—continued.

M. B. The defendant pleaded, *inter alia*, that the betrobhal had been repudiated, as the family to which the plaintiff belonged had been guilty of female infanticide, and that it would be illegal, according to Hindu law, to enter into relationship with it. The ceremonies necessary to effect a betrobhal had not been performed, though some ceremonies had been gone through. *Held* that, assuming the ceremonies, which are said to have taken place, to have constituted a contract to marry, and taking into consideration the particular cause assigned for the breach, the relief, if the plaintiff were entitled to any, should be in the shape of damages, and not by the specific performance of the alleged contract. *NOBUT SINGH v. LAD KOOR . 5 N. W., 102*

41. Agreement by partners in absence of representative of a deceased partner—*Person in position of trustee.*—Surviving partners are treated as trustees of the partnership property for the benefit of the representative of a deceased partner; and an agreement entered into by such surviving partners, in the absence of the representative of a deceased partner, which agreement is inconsistent with the nature of such trust—to deal with the partnership assets only by way of sale—will not be specifically enforced. *RAMMAL THAKURIDAS v. LAKHONAND MURBAM [1 Bom., Ap., 51*

42. Stipulation in kabulah—*Zamindar—Government, Liability of.*—One of the terms of a kabulah, equally binding on the Government and a zamindar, the parties concerned, was as follows: "The construction of bheries (small embankments), the excavation of the silt of bheries, the closing (the mouths) of the khalas, the construction of gunjura (large embankments), etc., in connection with the salt and sweet (i.e., not saline) lands of the said pergunnah, shall be made by the Government of the Honourable Company." In a suit brought by the zamindar to obtain an order upon the Government to re-execute and clear the water-passage of a particular khal situated within the pergunnah, the subject of the kabulah, *Held* that the case was not one in which the Court would decree specific performance. *CHUNDER SARKH MOOKERJEE v. GOVERNOR OF MADRASPUR . I. L. R., 3 Cal., 464; 1 C. L. R., 384*

43. Agreement to advance money on mortgage.—In a suit to compel the defendant to advance Rs. 1,800 or thereabouts to the plaintiffs, the unpaid balance of a sum of Rs. 3,000 which defendant agreed to advance on mortgage, and for which a mortgage was executed and delivered to the defendant, *Held* that the Court ought not to make a decree for specific performance of such agreement. *ANAKARAN KASMI v. SADMADATH AVTALA [I. L. R., 2 Mad., 79*

44. Suit for execution of fresh instrument on retention of first one by defendant—*Specific Relief Act (I of 1877), ss. 12, 21, 22.*—*Suit to restore terms of lost instrument.*—The plaintiffs, alleging that the defendants,

SPECIFIC PERFORMANCE—continued.

55. _____ Vendor and purchaser

then sued *D* and *R* for ejectment and to recover possession. *Heid* that *M*'s remedy lay in an action for damages, and that he could not claim specific performance unless *R* raised no objection to giving up possession. *BURNINGS DIRT PATENT v. MOON-AD AT* 22 W. R., 7

after previous conveyance to one unregistered - *Remedy of prior lender.*—Where the execu-

action for damages. NUND KISHORE LATE O. MOHUN
LATE 22 W. R., 164

remedy.—*Held*, under the circumstances of the case, since where but for damages is proper that there was not such a contract in contemplation of law.

BAL GOBIND MUKHTON v. LUTARUT HOSSAIN
[7 W. R., 142]

on conditions—Right to possession under former lease expired—Agreement extending lease on conditions

pendings, the defendant's father sold five-eighths of his interest under the lease to the plaintiff, and agreed

taken by the plaintiff. The defendant's father obtained possession in 1865, but refused to put the plaintiff's

day leave to institute a suit for redemption upon payment to the defendant of all sums advanced to him.

defendant in the suit, by which the term of the original lease was extended to the year 1875 for the consideration therein contained. In 1867 the

was in it in possession under the old lease, inasmuch as

CLAIR v. VINALTHREMAN CHURCH. 5 Mad, 251

57. _____
L. R., 14 L. A., 115
Sut by vendes

essence of the contract - Extension of the time stipulated for - Effect of such extension - Conditions

tion was completed, and the conveyance executed, the defendant, on the 2nd June 1886, by an agreement

...the fact that the Government has been unable to secure the necessary funds to carry out its policy of non-alignment.

in fact, it was agreed between him and the plaintiff that the plaintiff should complete the purchase

SPECIFIC PERFORMANCE—continued.

[illegible]

2. SPECIAL CASES—continued.

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2. SPECIAL CASES—continued.

[illegible]

REF: EARL H. BROWNE
[L. L. R. '13 Bonn, 658]

58. Failure to give possession under agreement - but for a valid possession, a purchaser of property of which possession was to be given, but which contract the vendor is unable to fulfil, is not a contract and is not a part of the purchase money, and is not obliged to sue for the whole purchase money. Mowbray Ltd. v. Manners Ltd. 13 N. W. 339

59. — Agreement to pay money

JOHN L. H. JOHNSON, Plaintiff, vs. JAMES H. JOHNSON, Defendant.

—And for consideration of the

[illegible]

SPECIFIC RELIEF ACT (I OF 1877)

—continued.

effect of s. 15 of Act XIV of 1859 considered, and the bearing of ss. 318 and 319 of the Code of Criminal Procedure with regard to cases of disposal and the jurisdiction of the Civil Courts illustrated. *EMRATOOTIAH CHOWDHRY v. KRISHNA SOONDUR SURMA* 8 W. R., 386

2. *Object of section—Wrongful dispossession—Onus of proof.*—S. 15 did not affect the general law on the matters to which it related, but provided a special remedy for a particular kind of grievance, e.g., to replace in possession a person who had been evicted by a wrongful act from landed property of which he had been in undisturbed possession, and to prevent a powerful person from thus shifting the evidence of proof from himself to another less able to support it. *KARAR CHUNDAR SEIN v. ADOD SHAIKH* 9 W. R., 602

3. *Possessory actions by persons wrongfully dispossessed—Civil Procedure Code, 1859, s. 230.*—S. 230 of the Civil Procedure Code of 1859, which related to possessory actions by persons wrongfully dispossessed in execution of decrees, did not apply to a case determined under s. 15 of Act XIV of 1859. *GOBIND CHUNDAR BADEER v. GOBIND GHOSH MUNDUL* 7 W. R., 171

4. *Previous possession—Dispossession.*—Where previous possession will not entitle a plaintiff to a decree for the recovery of possession except in a suit under s. 9 of the Specific Relief Act, 1877, which must be brought within six months from the date of dispossession. *Khadga Enaetollah Chowdhry v. Krishen Soondur Surma, 8 W. R., 389; Ertaza Hossain v. Bamy Mistry, T. L. R., 9 Cal., 130; Dabi Churn Boido v. Issur Chunder Mnyee, T. L. R., 9 Cal., 89; Kanu Mandy v. Khowaz Nussio, 5 C. L. R., 278; Wise v. Amerunnissa Khatoon, T. R., 7 I. A., 73; Krishnawar Kashwanat v. Vasudev Apati Ghilkar, T. L. R., 8 Bom., 371; Temraj Bhawanram v. Naryan Shivaram Khisti, T. L. R., 6 Bom., 215; Mohabeer Pershad v. Mohabeer Singh, T. L. R., 7 Cal., 591; 9 C. L. R., 164, referred to and explained. *PURMESHU CHOWDHRY v. BRINDLAL CHOWDHRY* I. L. R., 17 Cal., 256*

SHAMA CHURN ROY v. ABDUL KAREEM [3 C. W. N., 158]
NISA CHAND GAITA v. KANOHARAI BHAGAT [T. L. R., 26 Cal., 579]
3 C. W. N., 568

5. *Suit to enforce right of way.*—S. 15 of Act XIV of 1859 was not applicable to a suit to enforce a mere right of way. *HANO DVAL ROSE v. KRISTO GOBIND SIN 17 W. R., 70*

6. *Nature of possession necessary for suit—Possession as trespasser.*—Sensible. Mere possession as a trespasser was not sufficient to entitle a plaintiff to recover in a suit brought under s. 15 of Act XIV of 1859. Where must be in the

JOBE TEWARIE 21 W. R., 433

61. *Agreement by Government to pay moneys in lieu of tona gasas hak—Jurisdiction of Civil Courts—Pensions Act, XXIII of 1871, s. 4.*—A suit against Government, upon an alleged agreement by Government to pay moneys from its treasury in lieu of tona gasas haks, falls within the prohibition, in s. 4 of Act XXIII of 1871, to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted. Observations on the cessation of the collection of tona gasas by Government. *Quere*—Whether Government bound itself to act perpetually as agent of the gasasias in the collection of tona gasas. *Quere*—Whether the Civil Courts would compel the specific performance of such an agreement. *MAHARAJ MOHANANGI v. GOVERNMENT OF BOMBAY* I. L. R., 4 Bom., 437

2. SPECIAL CASES—concluded.

SPECIFIC RELIEF ACT (I OF 1877).

See INJUNCTION—SPECIAL CASES—EXCEPTION OR DECREE I. L. R., 4 Cal., 380

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS.

[I. L. R., 21 ALL., 348]

See PRESCRIPTION—EASEMENTS—LIGHT AND AIR I. L. R., 18 Bom., 474

See APPEAL—ORDERS.

[I. L. R., 22 Cal., 830]

See COSTS—SPECIAL CASES—SUMMARY SUIT FOR POSSESSION 15 W. R., 268

See PARTIES—PARTIES TO SUITS—PRINCIPAL AND AGENT.

[I. L. R., 5 Bom., 208]

See POSSESSION—NATURE OF POSSESSION.

[I. L. R., 15 Bom., 238]

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NATURE AND EFFECT OF DECISION 20 W. R., 12

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS.

[I. L. R., 6 Bom., 477]

See CASES UNDER SPECIFIC PERFORMANCE.

See STATUTES, CONSTRUCTION OF.

[I. L. R., 19 Cal., 544]

See TITLE—EVIDENCE AND PROOF OF TITLE [5 C. L. R., 278]

This section corresponds with s. 15 of the Limitation Act of 1859. The following are cases decided on that section:—

1. *Criminal Procedure Code, 1861, ss. 318, 319—Dispossession.*—The object and

—continued.
plaintiff judicial as opposed to mere physical posses-
sion DADANAI NARADA & SRI-COLLECTOR OF
BHOCH. 7 Bom, A.C., 82

7 ———
Warrant of execution—

8 ———
Right of way—immovable
property—A right of way is not "immovable
property" within the meaning of a § of the Specific
Relief Act MANABDAS & JEWANNAH
[1 Ind. Jur., N. S., 21: Bouche, O. C., 384
HERRALOT SANA
meaning of s. 15 JAWA CHANDRA CHAKRA

9 ———
Tenant illegally ejected.
A tenant in possession after expiry of his lease
and if 15, not 16, 17
OLD KHAJ & WOORAM KHAJ 9 W. R., 123

10. ———
Time within which suit
must be brought—The suit must be brought within
six months of the alleged ouster, otherwise another
possession would be of no avail to the plaintiff
AKREA BHER & TEKKOONISSA BHER 7 W. R., 332
[17 W. R., 332
Upland on review in TEKKOONISSA BHER & MO-
GUL JAM BHER 11 W. R., 370

11. ———
Plaintiff having sued under a §, Act
XIV of 1859, for possession of a parcel of land of
which he alleged himself to have been dispossessed
by defendant building a hut upon it, the Court of
first instance is entitled to recover notwithstanding
any other title DOS & KUTIAKAL & KUPP
1 Mad., 65

12. ———
Right under decree for
possession—A party recovering possession of land
and was entitled to cut the same
PRAXAKIS & BUNIA BHERA BISWA
[13 W. R., 104

13 ———
Warrant of execution—

14 ———
Suit to set aside award
under section—Although in a suit to set aside an
award made under a §, Act XIV of 1859, plaintiff
had to establish his own title before the party in
possession could be required to make good his case,
a Judge should look into the summary case itself, and
ascertain if there had been a proper inquiry and
trial in that case SUBHO MONTRA HOY & SUNDU
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15. ———
Conveyance by receipt of rent—The mere
by tenant does
the meaning of
an object of that
of that class
property is a person in physical possession of
will and consent. In the matter of THE ERIKHOV
OF TANKI MONTRA MONTRA, TANKI MONTRA
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13 ———
—continued.
Suit to set aside award
under section—Although in a suit to set aside an
award made under a §, Act XIV of 1859, plaintiff
had to establish his own title before the party in
possession could be required to make good his case,
a Judge should look into the summary case itself, and
ascertain if there had been a proper inquiry and
trial in that case SUBHO MONTRA HOY & SUNDU
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14 ———
Suit to set aside award
under section—Although in a suit to set aside an
award made under a §, Act XIV of 1859, plaintiff
had to establish his own title before the party in
possession could be required to make good his case,
a Judge should look into the summary case itself, and
ascertain if there had been a proper inquiry and
trial in that case SUBHO MONTRA HOY & SUNDU
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16. ———
Mortgages in possession
—Dispossession by mortgagee—Suit for posses-
sion—Award—It is no answer to a suit for pos-
session under a § of the Specific Relief Act,
brought against a mortgagee by a mortgagee who
has been forcibly dispossessed by the mortgagee, to
allege that the mortgage and possession under it
were obtained by the fraud of the mortgagee. The
mortgagee's proper remedy is by way of a suit to
set aside the mortgage and recover possession
SAYATI BIR NIKHAI & KAJI BIR LAKHAI
[1 L. R., 5 Bom., 446

17 ———
Partial dispossession—
A possessor's suit lies under
a § of the Specific Relief Act, when plaintiff's
possession has been partially, as well as when it has
been wholly, disturbed SARAVATI CHETTI & SON
I. L. R., 3 Mad., 250

18. ———
Conveyance by receipt of rent—The mere
by tenant does
the meaning of
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property is a person in physical possession of
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19. ———
Conveyance by receipt of rent—The mere
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20. ———
Conveyance by receipt of rent—The mere
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the meaning of
an object of that
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property is a person in physical possession of
will and consent. In the matter of THE ERIKHOV
OF TANKI MONTRA MONTRA, TANKI MONTRA
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21. ———
Conveyance by receipt of rent—The mere
by tenant does
the meaning of
an object of that
of that class
property is a person in physical possession of
will and consent. In the matter of THE ERIKHOV
OF TANKI MONTRA MONTRA, TANKI MONTRA
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[1 L. R., 14 Cal., 649

SPENCER RELIABLE ACT (1877)

•ကုမ္ပဏီ—

of immovable property, is ousted therefrom. That will do a not defeat a person who has been ousted

that the first court did not act without jurisdiction, the right claimed coming within the denomination of immovable property. *Bussard v. Bax*, 1 Parot & Faris, 221.

I. L. R., 12 Bom., 227.

50. *Right of Abeyance*—Suit for partition of right to fish in a tidal lake. A. mite for the possession of a right to fish in a tidal lake, the right of which belongs to another, does not come within the provisions of s. 1 of the "Spoliation Relief Act, 1877. NARAYAN PANDIT v. KUNDA PANDIT (11 T. R. 18 Cal. 80)

21. — *Inamurab property*—*Right of ferry* *Barren and Salt*—*Held by the Full Bench (Pearse and Trow, J., dissenting)*—*A suit for the possession of a right to fish in kind, the right of which does not belong to the plaintiff, does not come within the provisions of s. 9 of the Specific Relief Act.* *Farm Jilva v. Gorn Mous Jilva* I. L. R., 19 Cal., 547

32. Immovable property—Right of ferry. A right or ferry is immovable property or an interest therein within the meaning of the Specific Relief Act, 1923. KARUNA v. I. T. R., 13 Mad., 54 ARUNDA.

23. —Bombay Act III of 1876—Said by a trespasser to
re-enter possession. A trespasser, who has been dis-
possessed, is not entitled to bring a suit under s. 9
of the Specific Relief Act (1 of 1877) or under
Bombay Act III of 1876 to recover possession.
Dadabhai Narasidas v. Sub-Collector of Broach,
7 Bom. II. C. Rep., F. C. J., 82; Krishnarao
Yashwanth v. Tanden Apoji Ghotikar, I. L. R., 8
Bom., 371; and Tivandas Madhadas v. Maho-
med Ali Khan Ibrahimkhan, I. L. R., 5 Bom., 208,
referred to. AMIRUDIN v. MAHAMMAD JAVID
[I. L. R., 15 Bom., 685]

“お寺の僧侶と村の長老”

§ 19 of the Specific Relief Act the plaintiff is entitled to ask for compensation as against the defendant for giving effect to the petition. Under s. 28 of the Civil Procedure Code such an alternative claim may be allowed in so far as one or more of the defendants. KATIRIYAN BHATTACHARYA [I.L.R. 8 Cal. 693; 11 C.L.R. 330]

See INSTRUCTIONS—SPECIAL CASES—
BREACH OF AGREEMENT.
[L. T. R., 14 Mad., 18]

1 ————— 21—Agreement to refer to arbitrator of cases of emergency

[illegible]

1. The first step is to identify the key components of the system. This involves understanding the hardware, software, and data involved.

[illegible]

2
 Agreement to refer to arbit-
 ration—Award—Suit in respect of matter refer-
 red before—The parties to a suit applied for an
 order under section 10 of the Arbitration Act, 1940
 for appointment of an arbitrator to refer and
 determine the dispute between them in respect
 of certain shares in a company. The parties had
 entered into an agreement to refer all disputes
 between them to arbitration. The award of the
 arbitrator was set aside by the court on the
 ground that the award was not in conformity
 with the provisions of the Arbitration Act, 1940.
 The court held that the award was not in con-
 formity with the provisions of the Arbitration
 Act, 1940, and was therefore void. The court
 granted an order for the appointment of an
 arbitrator to refer and determine the dispute
 between the parties.

[illegible]

ខ្មែរ ឧបសគ្គ ចក្រ ទៅ មុន ពេល ដែល នាយករដ្ឋមន្ត្រី បាន

—*de d'ins*
—*de d'ins*
—*de d'ins*

such a suit. MISTRESS DAVIS : SARA H. FILLAT
[L. T. R., 27 Colo., 178]

1577 - 103 - ~~Re-earring~~ - ~~Keweenaw~~ - 9 of the
 27
 Court Procedures Code,
 Article II the Act is not prohibitive as to being
 under a 1st class Coh of Civil Procedure 4 re
 Bureau officers widely from 1st class AZHOVAT
 I. L. R. 4 Mad. 217

23 ——— Soil or position of land
by person wrongfully ejected — consider of what
importance — A Court will not in such a case
pled that it is necessary to the case, if the facts
show that a Court of equity will not do so.
Hence it is not necessary to plead that a Court
of equity will not do so, if the facts show that
it is necessary to the case. — A Court will not
plead that it is necessary to the case, if the facts
show that a Court of equity will not do so.

29. Where is there no passed under
form of divorce—
 1. of the British Act (of 1857) giving the
 plaintiff power to sue, and who directed that the costs
 of removal of suits and hearing expenses should be
 paid by the defendant under this Act.—*See* that
 the Act is joint or the divorce was beyond the
 scope of the law of divorce under 3 of the Act
 It is not Act and must be set aside. *See* CHANDRA
 DAS v. BATTI CHANDRA DAS—
 [I. L. R., 25 Cal., 803]

18
 S. E. VERNON AND TRENCHARD - VISCERAL-
 TUBERCULOSIS
 J. I. R., 14 Med., 4562

SPECIFIC RELIEF ACT (I OF 1877)

—continued.

and not a contract broken up by the conduct of all the parties to it. *TANAL v. BISHKSHAN*

[I. L. R., 8 AH., 57]

4. *Contract to refer dispute to arbitration—Refusal to perform such contract—Right of suit.*—To bar a suit under s. 21 of the Specific Relief Act, a refusal to arbitrate must be before the action is brought. *CHIST v. ADARAD*

[I. L. R., 23 Cal., 956]

5. *Agreement to refer to arbitration—Refusal to perform agreement.*—In a suit against a brother-in-law for maintenance the defendant alleged that, after the plaintiff had left his house, an agreement had been made between them to refer their dispute to arbitration, that the agreement of reference had been actually signed, but that, on the day fixed by the arbitrators for making their award, the plaintiff had given notice to them not to make an award, and accordingly they had not done so. The defendant contended that, by reason of this agreement, the plaintiff's suit was barred by s. 21 of the Specific Relief Act I of 1877. The alleged agreement to refer was in the following terms: "To D. M. and D. D. We, the undersigned two persons, give in writing to you as follows: We used to reside and act in the house together in peace and harmony. Later, a few days ago, in consequence of a disagreement amongst the women, I resided separately. Upon persuasion having been used towards her, I again reside in the house together with the rest; so now all are residing in the house in peace and harmony. If any occasion should arise, and if any disagreement should take place amongst the women, in order to find a remedy for that, we, the undersigned two persons, give in writing to you as follows: As to whatever award or settlement you two persons together will make, in accordance therewith, we agree to receive or pay. As to that, we are truly to act on our true religious faith; and we have written and delivered this writing of our free will and pleasure. The same is agreed to and approved of by our heirs and representatives, all; the 11th Jyesth Vadya Samvat 1939, the day of the event, Friday, the 1st June 1883. And as to this, you are truly to make and deliver a settlement within fifteen days' time." *Held* that the plaintiff's suit was not barred. The agreement did not indicate what was the subject-matter to be referred, and there was no evidence to show that the plaintiff's claim to maintenance had been laid before the arbitrator or that the plaintiff had refused to perform her agreement to refer in reference to that claim. Nor was there any evidence to show the time at which the plaintiff withdrew from the arbitration—whether before or after the time allowed to the arbitrators to make and publish their award, viz., fifteen days. If the latter, her withdrawal could not, in any view of the section, be held to be a refusal on her part to perform her agreement to refer. Even if the plaintiff's withdrawal was unjustifiable, it appeared that the defendant had taken no steps, under s. 523 of the Civil Procedure Code (Act XIV of 1882), to have the agreement filed in Court, and thus rendered her withdrawal of no effect. There was nothing to

6. *Arbitration—Agreement to refer matters in dispute in action then pending—Order under s. 373, pending the reference granting plaintiff permission to withdraw with liberty to bring fresh suit.*—The wording of s. 21 of the Specific Relief Act (I of 1877) is wide enough to cover contracts to refer any matter which can legally be referred to arbitration, and one of such matters is a suit which is proceeding in Court. The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 506 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex-parte* application under s. 373 of the Code for leave to withdraw from the suit with liberty to bring a fresh suit in respect of the same subject-matter. The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I of 1877). *Held* that the Court in the former proceedings had no power to revoke the order of reference prior to award except as provided by s. 510 of the Code; that consequently the Court's order under s. 373 was *ultra vires* if involving such revocation, or, if not involving it, left the order of reference still in force; that in either alternative the suit was barred by s. 21 of the Specific Relief Act; and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action. *PER TEXBRIT, J.*, that the suit was barred by the second clause of s. 373, the Court having had no jurisdiction to pass the order under that section, or, having referred the suit to arbitration, to restore the suit to its file and treat it as awaiting the Court's decision. *SHEOKH-BER v. DRODAR*

7. *Breach of agreement—Special cases—See INJUNCTION—SPECIAL CASES—s. 22.*

[I. L. R., 18 Bom., 702]

[I. L. R., 19 Bom., 784]

s. 23 and s. 27, cl. (e)—*Contract to take shares*—S. 23, cl. (h), and s. 27, cl. (e), of the Specific Relief Act (I of 1877) do not apply to contracts to take shares; and only embody the English law as to cases where a company has taken the

show that the defendant did not acquiesce in it. *Quære*—Whether the above agreement was not void by reason of uncertainty. *Quære*—Whether the actual submission of a subject in dispute to named arbitrators, followed by the attempt of one of the parties to such submission to withdraw from or to prevent an award being made upon the submission, falls within the concluding paragraph of s. 21 of the Specific Relief Act I of 1877. *ADARAD v. GUBSAN-DAS NATHAN*

[I. L. R., 11 Bom., 199]

8. *Arbitration—Agreement to refer matters in dispute in action then pending—Order under s. 373, pending the reference granting plaintiff permission to withdraw with liberty to bring fresh suit.*—The wording of s. 21 of the Specific Relief Act (I of 1877) is wide enough to cover contracts to refer any matter which can legally be referred to arbitration, and one of such matters is a suit which is proceeding in Court. The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 506 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex-parte* application under s. 373 of the Code for leave to withdraw from the suit with liberty to bring a fresh suit in respect of the same subject-matter. The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I of 1877). *Held* that the Court in the former proceedings had no power to revoke the order of reference prior to award except as provided by s. 510 of the Code; that consequently the Court's order under s. 373 was *ultra vires* if involving such revocation, or, if not involving it, left the order of reference still in force; that in either alternative the suit was barred by s. 21 of the Specific Relief Act; and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action. *PER TEXBRIT, J.*, that the suit was barred by the second clause of s. 373, the Court having had no jurisdiction to pass the order under that section, or, having referred the suit to arbitration, to restore the suit to its file and treat it as awaiting the Court's decision. *SHEOKH-BER v. DRODAR*

[I. L. R., 9 AH., 168]

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—continued—
 doubtful whether under s 27 (b) of Act I of 1877 agreement should not be granted, inasmuch as that D could claim that specific performance of that contract lay between A and B and that the property upon the same property which had passed to the transferee under a sale in execution of a decree for the enforcement of the subsequent lien B had for PHARAD v DAVLAT ILAK I L R, 3 All, 700

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s 30

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Specific Relief Act (1 of 1877) s 31—Where a party to a contract of tenancy desires to have it rescinded or altered the suit should be brought under s 31 of the Specific Relief Act v KOTIAS CHUNDAS BOSE & KOTIAS CHUNDAS BOSE
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 I L R, 20 Cal, 654

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 I L R, 3 Mad, 215

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Evidence necessary to set aside contract—In order that a contract should be set aside under s 36 (b) of the Specific Relief Act (1 of 1877) the plaintiff should be shown to have been less in the transaction than the defendant HARI BAI KRISHNA v HARI MOHANSWAL
 I L R, 18 Bom, 342

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 I L R, 26 Cal, 381

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 I L R, 7 Cal, 736
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 I L R, 15 Bom, 657

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See VENDOR AND PURCHASER—VOID AGREEMENT TO CONVEY
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See VENDOR AND PURCHASER—VOID AGREEMENT TO CONVEY
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[I. L. R., 12 All., 523

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Impossibility arising after execution of contract to perform a portion—Suit to cancel such portion.—A contract was entered into between the plaintiff and the defendant by which the plaintiff agreed to cultivate the defendant for the defendant for a specified number of years in certain specified lands situated in different villages, with respect to portion of which lands the plaintiff was a sub-tenant only. During the continuance of the contract the plaintiff lost possession of those lands through his immediate landlord having failed to pay the rent and having been in consequence ejected therefrom by the owner. In a suit to have so much of the contract as related to those lands cancelled on the ground that it had become impossible of performance through no neglect on his part, *Held* that Ch. IV (ss. 35-38) of Act I of 1877 (specific Relief Act) did not apply to such a case, but that the plaintiff was entitled to the relief he sought under s. 40 of that Act, inasmuch as the contract was evidence of different obligations, viz., to cultivate and in different villages. *INDEX*
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[I. L. R., 17

11 W. R., 77

2 Mad, 436

I. L. R., 8 Bom, 365

I. L. R., 13 Bom, 617

See SPLIT CAUSE (UNT PENDING)

TOWNS (MAGNIFICENT AND PROCEEDING—

THE HINDU)

[I. L. R. 18 Cal, 445

See SPECIAL ON SECOND APPEAL—PROCE-

DURE IN SPECIAL APPEAL

[I. L. R., 13 All, 583

I. L. R., 20 Bom, 791

I BEGAL REGULATIONS

See REG. XII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

See REG. XVII OF 1825—N. E.

STAMP—concluded

2 BOMBAY REGULATIONS—concluded

1. — s 14, sub-s (1)—*Deed of sale of property given in gift from what time operative*—A donee of the grantor was a third party within the meaning of Regulation XVIII of 1827, s 14 sub-s 1, and therefore as against him a deed of sale of the property given in gift was only valid from the date on which it was stamped. Precedents on this point questioned, but followed JAGANNATH VITHAL & APAJI VISHNU 5 Bom, A C, 217

2. — Purchaser at sale

valid not from the date on which it was stamped Jagannath Vithal & Apaji Vishnu 5 Bom, A C, 217, followed NARAYAN DESHPANDE & RANGUBAI [I L R, 5 Bom, 127]

3 MADRAS REGULATIONS

Mad Reg XIII of 1816—*No provision for payment of penalty*—Secondary evidence of unstamped document—In a suit to redeem a mortgage of 1883 executed upon an unstamped cadian liable to stamp duty under Regulation XIII of 1816 secondary evidence of the contents of this document was tendered on payment of a penalty. Held that the evidence could not be admitted KOPASAN & SHAMU I L R, 7 Mad, 440

Mad Reg II of 1825, s 4—*Deed transferring property conditionally*—*Ad valorem stamp duty*—An instrument dated 1853 which purported to be a transfer by the executant of the

REFERENCE UNDER STAMP ACT, s 40 [I L R, 16 Mad, 419]

STAMP ACT (XXXVI OF 1860)

Security bond given to abkari renter—A security bond executed by a third party to the abkari renter is not exempt from stamp duty LAMASANI CHETTI & PAPPAR REDDI 1 Mad, 180

s 14—*Bond executed on optional stamp*—No larger sum could be recovered under s 14 Act XXXVI of 1860 upon a bond executed on an optional stamp than that optional stamp covers, and no amount of penalty can make up the deficiency in the stamp K. RAMU ALI & ABDUL WAHAB [17 W R, 13]

1 sch A and s 14—*Promissory note containing agreement to waive jurisdiction*—A promissory note containing an agreement by the

STAMP ACT (XXXVI OF 1860)—concluded

which I hereby waive and agree to waive all pleas," properly stamped as a promissory note did not require an additional stamp as an agreement under Act XXXVI of 1860 sch A and s 14 RAKHAL DASS SINGH & ROY CHUNDER DUTT [1 Ind. Jur, O S, 124]

2 sch A, art 4—*Promissory note of no effect*—On ourselves 10, being and the account a hundred and to A of ACT HUSAIN 1 Mad, 152

3 sch A, art 20—*Partnership agreement*—An agreement on a 124 stamp paper stipulating by B for

[1 Mad, 226]

STAMP ACT (X OF 1862)

s 3
See GENERAL CLAUSES CONSOLIDATION ACT, 1868 s 6 7 Mad, Ap, 11

1 Offence under section—*En grossing deed on unstamped paper*—The mere en grossing of a deed on unstamped paper was not an offence under s 3 of Act X of 1862 nor did the signing such deed as a witness constitute any such offence REG & JETHA MOTI REG & VIRJI KUVARJI 2 Bom, 135 2nd Ed., 129

PER & JOTI BEN SATU 1 Bom, 37

2 Penalty—*Attesting wit*

STAMP ACT (X OF 1862)—continued.

be a party to," used in the section, and are therefore not punishable under it. **ANONYMOUS**

[3 Mad., Ap., 27

3. ——— and s. 52—*Omission to get sanction of Collector.*—A prosecution under s. 3. Act X of 1862, not having been authorized by the Collector of the Stamp Revenue for the district or any other officer specially authorized by the Government in that behalf, was held to be, under s. 52 of that Act, irregular. **QUEEN v. ADJODHYA KRISHAD**

[2 N. W., 183

1. ——— s. 14—*Documents improperly stamped—Evidence, Admissibility in.*—Documents not bearing proper stamps under Act X of 1862 are not admissible in evidence even to show the terms of the deed as against the party producing the same. **OOMRAO SINGH v. METHAB KOONWAR**

[3 Agra, 103a

2. ——— Act XXVI of 1860—*Bond stamped after suit.*—A bond stamped subsequently to the institution of a suit is valid, under the provisions of the Civil Procedure Code and of the Stamp Acts of 1860 and 1862, provided it be properly stamped when produced at the first hearing of the suit and when the Court is asked to receive it in evidence. **ATMARAM GULABRAI v. AMIRGHAND RUPCHAND**

3 Bom., A. C., 92

3. ——— *Calculation of stamp duty—Nature of instrument.*—In determining the stamp required for any particular instrument, regard must be had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title is a misnomer. **PENDSE v. MALSE**

[3 Bom., A. C., 94

4. ——— *Single document containing two contracts and bearing one stamp—Allowance of value of stamp.*—Where a document contained two distinct contracts requiring separate stamps, but the whole was impressed with one insufficient stamp, it was held that this stamp might be taken into account in making up the aggregate of the stamps required. **BALAJI MAHADEV v. KRISHNAJI BIN CHIMNAJI**

6 Bom., A. C., 95

5. ——— *Copies of record of criminal trial—Liability to stamp duty.*—With the exception of the depositions of the witnesses and the documentary evidence and copies of the final sentence or orders passed by Criminal Courts, which parties desirous of appealing from such sentence were required by s. 416 of the Code of Criminal Procedure, 1861, to file with their petitions of appeal, when the party who was desirous of appealing was in confinement under the operation of the sentence or order at the time that he applied for a copy of the same, it was held that copies of any part of the record of a criminal trial could only be furnished to applicants on stamp paper. **ANONYMOUS**

[4 Mad., Ap., 58

6. ——— *Transfer of tenure—Admissibility in evidence.*—The transfer of an under-tenure, endorsed upon the back of the tenant's pottah,

STAMP ACT (X OF 1862)—continued.

is not admissible in evidence, unless it be stamped as though it were a separate deed. **TETAI ABOY v. GAGAI GURA CHAWA**

3 B. L. R., Ap., 30

S. C. PITAYE AHUNG v. GIRGHEE KOER AJOOAH
[11 W. R., 365

7. ——— *Surrender of equity of redemption—Unstamped endorsement.*—Where the defendant executed in favour of the plaintiff what purported to be a deed of absolute sale, but an ikrar executed contemporaneously reserved the right of redemption to the defendant, and the plaintiff alleged that, as the original deed was, on the face of it, an absolute sale, and as the effect of it was merely controlled by the ikrar, the return of the latter extinguished the equity of redemption. A separate document requiring a separate stamp was unnecessary. **RAJ COOMAR SINGH v. RAM SURAYE ROY**

[11 W. R., 151

s. 15.

See STAMP ACT, 1879, s. 34.

[I. L. R., 14 Mad., 255

s. 15, sub-s. (6)—*Application for remission of stamp duty in pauper suits.*—It is not the duty of a Civil Court to receive and submit to the Board of Revenue an application from a pauper plaintiff for remission or mitigation of penalty under the stamp law; the pauper should himself make timely application under sub-s. 6, s. 15, Act X of 1862. **GOLAM GUFFOOR v. EKRAM HOSSEIN CHOWDHRY**

[10 W. R., 358

ss. 15 and 17.

See APPELLATE COURT—REJECTION OF ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.

[3 B. L. R., A. C., 126, 235

5 B. L. R., Ap., 10

7 B. L. R., 653

I. L. R., 5 Bom., 621

2 Mad., 321

3 Mad., 71

s. 17.

See APPEAL—ACTS—STAMP ACT, 1862.

[3 Bom., O. C., 153

1. ——— *Insufficient stamp.*—S. 17 of Act X of 1862 only applied to the reception of documents under s. 15, which had been insufficiently stamped, not to documents on which there was no stamp. Such documents should not be received at all. **LALJI SINGH v. AKRAM SER**

[3 B. L. R., A. C., 235; 12 W. R., 47

2. ——— *Intention to evade stamp laws.*—A bond, executed between a plaintiff who sued upon it and the defendants, contained the following clause: "And inasmuch as we (the defendants) are urgently in want of money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff), to bring a suit against us, whatever penalty

STAMP ACT (X OF 1862)—continued.

you may have to pay shall be in due good by us, with interest." The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the stamp laws and refused to receive evidence to the contrary. He also refused to admit the bond in evidence. *Held*, on reference to the High Court, that the clause in question did not amount to an agreement to evade the stamp laws. The Judge might have inferred from it that it was the intention of the parties to evade the stamp laws but in that case he should have heard evidence to the contrary. **SASHI BHUSUAN BASERJEE v. TARA-CHAND KAR**

[3 B. L. R., A. C., 329; 11 W. R., 553]

3. — *Intention to evade payment of duty* — A Court to which a document is tendered in evidence under this section ought not to reject it, unless it clearly appears that there was an intention to evade the payment of stamp duty. **ROYAL BANK OF INDIA v. HOHMASJI BHAKSPATI**

[3 Bom., O. C., 153]

4. — *Permission to pay penalty where document is lost*. — *Q* are Whether permission to pay the stamp duty and penalty can be given in the case of a lost instrument. **ARUNACHELLOM CHETTY v. OLAGAPPAN CHETTY** . 4 Mad., 312

5. — *Hundi—Inadmissibility in evidence for want of stamp* — The plaintiff brought an action against three defendants under the following circumstances. The third defendant was the tenant of a village under the second defendant the first defendant being the agent and manager of the second defendant. The third defendant owed the second defendant a sum of money on account of rent, and drew a hundi on the plaintiff for Rs. 1,000 to be paid to the first defendant or order, and retaining these words. "For which am now I shall deliver over to you grain in that village and its hmelets, and for which the Duan (first defendant) will issue an order to the above effect." The hundi was upon a one anna stamp. Plaintiff, on receipt of this hundi, drew upon the back of it another hundi upon his mother-in-law in the following terms. "On demand

shall be delivered to the said Duan, the Duan of Vindavani." This was signed by the plaintiff, and beneath his signature was that of the first defendant. The amount mentioned in the hundi was

Rs. 1,000. The Civil Judge decreed for the plaintiff. On appeal — *Held* by the High Court reversing the decision of the Civil Court, that the said hundi was not admissible in evidence, not being stamped, and that there was no evidence of such an agreement as that relied on by the plaintiff. **MAHOMED RAHAMATULLA v. WARD** . 5 Mad., 331

STAMP ACT (X OF 1862)—continued.

6. — *and s. 15 — Intention to evade payment of duty—Jurisdiction*. — In a suit brought in a Small Cause Court to recover money, being a debt secured by a hysab entered on a leaf of a Khatta brok, where the defendant objected to the admission of the leaf as evidence, because it did not bear a proper stamp, — *Held* that under ss 15 and 17, Act X of 1862, it was competent to the Judge to find, on the facts before him, whether the absence

[13 W. R., 102]

7. — *Insufficiently-stamped document—Procedure—Admissibility in evidence* — The plaintiff sued his elder brother for a share in certain family property. The defendant raised a question of family custom and relied on a certain deed of release which he said the plaintiff had given him, but the existence of which the plaintiff denied. That document was not stamped, though, on the face of it, it stated that it was to be stamped. No objection was taken on that score to the document before the first and lower Appellate Courts, who considered that the document was a genuine document executed by the plaintiff. After its production, it had an insufficient stamp of two annas put upon it. The

defendant refused to admit the document for want of a stamp, or—which would be more correct—it might have required it to be properly stamped and the penalty paid into Court, but the

2. — *s. 23—Promissory note—Interest*. — A promissory note is sufficiently stamped if the stamp covers the principal sum named in the note without reference to the interest. **GOVINDO YONGO** [2 B. L. R., O. C., 165; 12 W. R., O. C., 1]

3. — *Promissory note—Admissibility in evidence* — *A B*, by an instrument in writing, dated 6th August, promised to pay *C D*, "on demand," Rs. 310 13 3. In the margin of the instrument was written due "30th August," and annexed thereto

the signature of *A B*. The instrument was not stamped, and was not admitted in evidence, notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time, or if paid on demand that the maker shall be

STAMP ACT (X OF 1862)—*continued.*

entitled to discount. *CHANDRAKANT MOOKERJEE v. KARTIKCHARAN CHATTE*

[5 B. L. R., 103: 14 W. R., O. C., 38

3. ———— *Promissory note—Ambiguity.*—Where the wording of a promissory note bearing a one anna stamp appears to be ambiguous as to whether it is payable on demand, the Court will take the evidence of the parties as to the intention, and will then decide whether it is properly stamped. Under such circumstances, the Court will take evidence of usage. *BANK OF HINDUSTAN, CHINA, AND JAPAN v. SEDGWICK* . 1 Ind. Jur., N. S., 107

s. 26.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[1 Mad., 217
12 W. R., 378

Refund of stamp duty—Commencement of suit.—Held that, for the purpose of refund of half stamp duty under s. 26 of Act X of 1862, the hearing of a suit in a Small Cause Court commenced when proof of the service of the summons was taken on the day appointed for the hearing; and where proof of the service of the summons had been previously taken, it must be considered as taken at the commencement of the proceedings on the day appointed for hearing. *AMIRCHAND JANNADAS v. MAGGAN ANTHY* . 4 Bom., A. C., 176

— s. 27—*Right to recover on contract only amount covered by stamp where stamp is optional.*—Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiffs cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. In a suit for the recovery of money due under a written contract the defendants admitted that a sum of Rs. 329-4-0 was due to the plaintiffs, subject to certain deductions which they claimed to be entitled to set off against the plaintiffs' claim. The defendants put in evidence the written contract, the stamp upon which was only sufficient to cover the sum of Rs. 5,000. Held that, notwithstanding the admission of the defendant, the plaintiffs could only recover Rs. 5,000 in the suit. *KISTNASAMY PILLAY v. MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS* . 4 Mad., 120

— s. 32—*Appeal on valuation of claim.*—Under s. 32, Act X of 1862, an appeal relating to the valuation of a claim can be entertained by the High Court. *BASOO MAD FURUSH v. HURKE PANDEY* . 11 W. R., 479

— s. 50, sub-s. (2)—*Jurisdiction of Collector—Offence under Criminal Procedure Code (Act XXV of 1861), ss. 169, 171.*—An application was made to a Collector under s. 50, sub-s. (2), Act X of 1862, to replace a damaged stamp by a new one. As it appeared that the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial. Held that, the document not having been given in evidence in any proceeding in Court, the Collector was not

STAMP ACT (X OF 1862)—*continued.*

bound to proceed under ss. 169, 171 of the Criminal Procedure Code. *QUEEN v. GOUR MOHAN SEN*

[3 B. L. R., A. Cr., 6: 11 W. R., Cr., 48

— sch. A, art. 1—*Promissory note for payment of grain.*—An instrument in the form of a promissory note for grain should be stamped, under art. 1 of sch. A of Act X of 1862, with a stamp of the value of one rupee. *LAOHIRAM JAYASANGJI v. RAMJI BIN SHIVAJI* . 6 Bom., A. C., 107

— art. 3—*Petition for a lease.*—In a suit for payment of rent for use and occupation of land, where the basis of plaintiff's claim was for a kabuliati, the agreement produced as evidence of the contract, not being the deed of contract itself, was held to be not liable to be stamped under art. 3, sch. A, Act X of 1862. *CHOONEE MUNDUR v. CHUNDER LALL DASS* . 14 W. R., 334

Affirming on review S. C. . 14 W. R., 178

1. ———— art. 4—*Agreement—Bond.*—In a suit for breach of contract to cultivate and deliver indigo, for recovery of the amount specified in the contract,—Held the stamp duty depended on the amount of consideration for the undertaking. *DOYLE v. MENDAREE MUNDUR*

[5 W. R., S. C. C. Ref., 10

2. ———— and art. 15—*Agreement to supply cotton.*—An agreement to supply cotton in consideration of a sum of money received should be stamped under art. 4, and not under art. 15, sch. A, Act X of 1862. *SAMSUDDIN SUITAN v. RAMJI BHUKA* . 5 Bom., A. C., 151

1. ———— art. 10—*Promissory note—Bond.*—A promissory note, attested by a witness, does not require to be stamped as a bond under Act X of 1862, sch. A, art. 10. The words in that clause "not being a bond, instrument, or writing bearing the attestation of one or more witnesses," referred only to the preceding words, "other order or obligation for the payment of money." Also the words "bearing the attestation of one or more witnesses" apply only to the words "instrument or writing," and not to the word "bond." *GLADSTONE v. SADOO CHURN DUTT*

[2 Ind. Jur., N. S., 203

2. ———— *Promissory note.*—In a suit, brought by a joint-stock company in liquidation against a former director of the company, for Rs. 27,30,000 on a promissory note, dated the 1st of March, and purporting to be paid on demand, but with the words in pencil "due 4th June" put on it, the same day it was signed, in accordance with an understanding between the defendant and the other directors that they would not press him for payments before the latter date, and signed by the defendant some days after the day it bore date,—Held that a one-anna stamp was not sufficient under sch. A, art. 10, of Act X of 1862. *EASTERN FINANCIAL ASSOCIATION v. PESTANJI CURSETJI*

[3 Bom., O. C., 9

3. ———— *Written direction by master to servant for payment of money.*—A written direction given by a master to a servant for the payment of money belonging to the former in the hands

STAMP ACT (X OF 1862)—continued

of the latter was held to be not an order for the payment of money within the scope of the terms used in art 10, sch A, Act X of 1862, as amended by Act XXVI of 1867. **PUTHULWANT RAO v. PUT TEHOODDEEN** 1 N. W. Ed 1873, 143

1. ——— art. 12—Security bonds for costs of appeal to Privy Council—Security bonds for costs of appeal to the Privy Council come within art 12 sch A, Act X of 1862, and ought to be executed on a stamp as therein specified. **SOONJHAREE KOONWUR v. RAMESSUR PANDY** [5 W. R., Mis., 47

2. ——— Solehnamah admitting satisfaction of decree—1st edition—Agreement—Act XXVI of 1867, art 10—In a suit upon a bond for Rs 40 with interest, the defendant filed a solehnamah admitting that the amount due from him was Rs 25 and agreeing to pay that sum by instalment.

for an instalment bond. **MANICK CHANDRA v. LALLMON SHERIK PUNCHANAY SIRCAR v. GURCH MITRUL**. [5 W. R., 214

——— art. 18—Penalty—Obligation for payment of money—Where the parties to an

non performance, at the appointed time, of the warr

DLWAN SINGH . . . 3 N. W., 200

——— art 42—Lease—Instrument of landlord and tenant

1. ——— art 43—Sanad to gomashtha to collect rents—A sanad, which authorized a gomashtha to collect rents and to sue for them, requires to be stamped. **LAG**

2. ——— Instrument operating as power of attorney—J M executed in favour of P an instrument authorizing P to recover, by suit or otherwise, from Messrs W and N, a sum of Rs 22,500 (or thereabouts) which contained this clause "From whatever sum P may recover from W and N he is to

STAMP ACT (X OF 1862)—concluded

of attorney, and not as an assignment, and was properly stamped under Act X of 1862 sch A, art 43, with a stamp of Rs 1. **PESTANJI MANCHABJI WADIA v. MATCHETT** 7 Bom. A. C., 10

——— art 54—Deed of partition—Each sharer's copy of an instrument—Under Act X of 1862, sch A, art 54, each sharer's copy meant

unstamped.—Held that it should be stamped as each sharer's copy of an instrument under Act X of 1862, sch A, art 54. **NARAYAN RAGHUNATH v. KASHIWATH** 1 L. R., 8 Bom., 299

1. ——— sch B, art 11—Suit for declaration of title to portion of land paying revenue to Government—Interest in land—A suit for the declaration of title to a fractional share in a zamindari paying revenue to Government is not a suit "for lauds forming one entire mehal or a specific portion thereof with a defined jumma" such share being "an interest in land" should be valued according to the provisions of note (c) art 11 sch B Act X of 1862. **RAJ CHUNDER ROY v. CHUNDER CHURN NAIK** [8 W. R., 437

2. ——— Time for obtaining copy of decree—The rule of circular No 31,

paper filed under the general rule at end of sch B, Act X of 1862, when the copy cannot be comprised within the stamp paper put in. **CHUMUN CHOWDHURY v. ALI AZIM** [5 W. R., 188

3. ——— Suit for resumption—"Revenue"—A suit to resume lands as lakhiraj fell in respect of stamp duty under cl (d), art 11, sch B of Act X of 1862. The term "revenue" in cl (d) must be read as meaning revenue or rent, whether to Government or to a zamindar. **GOREE MOHUN MOJOMDAR v. MACKINTOSH** 5 W. R., 395

STAMP ACT (XXVI OF 1867)

See UNDER COURT FEES ACT, X OF 1867.

STAMP ACT (XVIII OF 1869)

See GENERAL CLAUSES CONSOLIDATION ACT (I OF 1869), s. 3 7 Mad. Ap. 9.

1. ——— Insufficiency of stamp.—The Civil Court is authorized, under Act XVIII of 1869 to receive the proper amount of stamp which should have been affixed on the plaintiff's pottah under the law in force when it was executed. **MAHOMED RIJAH v. COLLECTOR OF CHITTAGONG** [6 B. L. R., Ap., 117: 15 W. R., 116

STAMP ACT (XVIII OF 1869)—continued.

2. ———— *Agreement executed both in England and India—Liability to stamp duty—Admissibility in evidence.*—An agreement was first executed in England by *D* and *E*, and by *A*, the senior partner in the firm, and stamped with the stamp required by English law for agreements executed in England, and it was subsequently executed in India by *B* and *C*, the other two partners, but not stamped with an Indian stamp. *Held* that the agreement was liable to Indian stamp duty, and was not admissible in evidence unless and until the proper stamp duty and penalty under Act XVIII of 1869 were paid. *OAKES v. JACKSON*

[I. L. R., 1 Mad., 134]

3. ———— *Orders on tenants to pay rent to person to whom landlord has executed release.*—Orders upon tenants to hold themselves responsible to a particular person to whom a release has been made by their landlord are not documents which the law requires to be stamped, and ought not to be rejected as evidence on the ground of their not being stamped. *BUKSHEE KUNNEE LALL v. THAKOORNATH SAI* 25 W. R., 80

1. ———— s. 3, sub-s. (5)—*Bond—Definition of bond.*—The definition of the word "bond" in the Stamp Act of 1869 is not exhaustive; the word "includes" in sub-s. 5 of s. 2 has an extending force, and does not limit the meaning of the term to the substance of the definition. *IN THE MATTER OF THE PETITION OF NASIBUN. NASIBUN v. PREO-SUNKER GHOSE* I. L. R., 8 Cal., 534

2. ———— *Entry of loan in account books.*—Entries of loans in account books cannot be treated as bonds within the meaning of sub-s. (5) of s. 3 of Act XVIII of 1869. *QUEEN v. BULDEO* 2 N. W., 453

1. ———— sub-s. (11)—*Conveyance.*—An instrument, which purports to convey two or more properties for a sum of money, composed of items described in the instrument as the values of those properties, is simply a deed of sale coming under the definition of "conveyance" in Act XVIII of 1869, s. 3. The stamp duty, properly leviable upon such an instrument, should therefore be calculated upon the aggregate sum specified therein, and not upon the various items composing that sum. *IN RE TUKARAM HARI ATRE* 10 Bom., 354

2. ———— *Sale-certificates—Conveyance—Mad. Act VIII of 1865, ss. 35 and 40.*—Certificates of sale issued under ss. 35 and 40 of Madras Act VIII of 1865 are not conveyances subject to stamp duty. *ANONYMOUS* 8 Mad., 112

1. ———— sub-s. (15)—*Lease—Contract to pay sum of money in consideration of a grant.*—An engagement by a proprietor of land to pay to a superior a sum of money in consideration of a grant of the right to farm dues, in the nature of revenue, is a "lease" within the meaning of the General Stamp Act, 1869. *COLLECTOR OF TANJORE v. RAMASAMIEB* I. L. R., 3 Mad., 342

STAMP ACT (XVIII OF 1869)—continued.

2. ———— *Second lease altering first stamped and registered.*—After a complete lease has been executed, stamped, and registered, if another document is prepared and executed with a view to alter the first, and substitute new terms so far as the rent is concerned, it requires, under the Stamp Act, to be itself stamped with the stamp provided for a lease. *BYJNATH DUTT JHA v. PUTSHEE DONAIM*

[20 W. R., 36]

sub-ss. (18) and (26) and sch. I, art. 10—*Mortgage—Pledge by letters of assignment of property not in esse.*—*M*, the manager of an indigo concern, appointed under s. 243 of Act VIII of 1859, without communicating with *A* and *B*, mortgagees of the concern, and with only the verbal sanction of the Court, applied to the plaintiffs for money, and on the 26th April the plaintiffs wrote to *M* that they would make advances to the extent of Rs50,000, upon his assigning to them and giving them a first charge on the first 250 maunds of indigo to be manufactured in the season, and they enclosed a form of assignment for *M*'s signature, which he duly signed, and returned to the plaintiffs on the 3rd May. This document bore a 2-rupee stamp. In September and October *M* obtained further advances from the plaintiffs in respect of other indigo, giving them similar letters of assignment, which also bore 2-rupee stamps. The indigo, when manufactured, was claimed by *A* and *B* under their mortgage, and their claim being resisted by *M*, who set up against them the plaintiff's rights under the letters of assignment, *A* and *B* brought a suit to enforce the provisions of their mortgage-deed. In this suit the indigo was attached before judgment and sent to Calcutta for sale. The plaintiffs now sued *A*, *B*, *M*, and the holders for sale to establish their first charge in respect of their advances to *M* upon 360 maunds of the indigo on the strength of their letters of assignment. *Held per GARTH, C.J., and MACPHERSON, J.,* that the letters of assignment to the plaintiffs were not mortgages within the definition of the Stamp Act, XVIII of 1869; and that the proper stamp to be affixed to such document was a stamp of 8 annas. *MORAN v. MITTU BIBEE* I. L. R., 2 Cal., 58

1. ———— sub-s. (25)—*Promissory note insufficiently stamped—Express contract.*—A suit on a promissory note payable on demand which was not stamped was held to have been rightly dismissed, the note being inadmissible as evidence with reference to Act XVIII of 1869, s. 3, sub-s. 25. *Held* that in such a case the plaintiff, if he recovers at all, must do so on the contract actually made and not on any implied contract. *ANKUR CHUNDER ROY CHOWDHRY v. MADHUB CHUNDER GHOSE* 21 W. R., 1

2. ———— *Promissory note—Bond.*—The defendant, having borrowed Rs50 from the plaintiff, gave him, on the 9th November 1878, an instrument, which was in effect as follows: "*B* (defendant) writes this 'rukka' in favour of *A* (plaintiff) for Rs50 cash received, to be repaid on the 13th November 1878: in the event of default, he shall pay interest at R1 per diem. *Held* (STUART, C.J., dissenting) that such instrument was a "promissory note" within the meaning of the Stamp Act

STAMP ACT (XVIII OF 1869)—continued.

stamp paper, the two aggregating the proper stamp leviable, was tendered in evidence without the certificate required by s. 49 of the Stamp Act. *Held* that there was a deficiency in the stamp on the bond, and therefore a liability to the penalty under s. 20. The deficiency must be calculated to be equivalent to the difference between the value of the stamp on one of the papers, and the whole value chargeable.

ANONYMOUS . . . 7 Mad., Ap., 36

3. ——— *Lost deed proved to be unstamped.*—In cases where a lost deed is shown not to have been stamped, the Court should require the same money to be paid, as if the deed itself were produced. *HARAN CHUNDER BHOOREE v. RUSSICK CHUNDER NEOGY* . . . 20 W. R., 63

4. ——— and s. 22—*Admission of unstamped document on payment of penalty.*—Where a Subordinate Judge admitted an unstamped document after payment of stamp duty and penalty under Act XVIII of 1869, s. 20, and endorsed on it a certificate that the proper stamp had been levied, but found out afterwards that the original omission was owing to an intention to evade payment of stamp duty,—*Held* that the certificate was not such as was contemplated by s. 20, and did not make the document admissible; and that the Judge ought, under s. 22, to have impounded the document and sent it to the Collector. *PROSUNNO NATH LAHIREE v. TRIPPOORA SOONDUREE DABEE* . . . 24 W. R., 88

——— s. 24 and ss. 29 and 44—*Evasion of stamp law—Promissory note not duly stamped.*—That which the Magistrate has to adjudicate upon on a prosecution coming before him, under s. 24 of the Stamp Act, is whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper officer. Any person who makes himself liable by committing an offence within the terms of s. 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under s. 44. If an instrument called a promissory note or other document of that kind and as such liable to the duty imposed by the Act is not duly stamped, the person subject to penalty is the person who makes it, and not the person in whose favour it is made. The Magistrate of the district should not himself try a case in which he instituted the prosecution as Collector. *QUEEN v. NADI CHAND PODDAR* . . . 24 W. R., Cr., 1

1. ——— s. 28—*Document requiring anna stamp—Stamp affixed subsequently to execution of document.*—A document which by law requires a one-anna adhesive stamp to be affixed must be received in evidence, if, at the time of its being tendered, it bears the requisite stamp, even though such stamp has been affixed subsequently to the execution of the document. *BHAURAM MADAN GOPAL v. RAMNARAYAN GOPAL* . . . 12 Bom., 208

NOOR BIBEE v. RUMZAN . . . 24 W. R., 198

KALI CHURN DAS v. NOBO KRISTO PAL
[9 C. L. R., 272]

STAMP ACT (XVIII OF 1869)—continued.

2. ——— *Power to receive in evidence unstamped note on payment of penalty.*—Under s. 28 of Act XVIII of 1869, a Court has no power to admit in evidence an unstamped promissory note (payable on demand or otherwise) upon the payment of the stamp duty and the penalty laid down in s. 20 of that Act. *DOSABHAI KAVASJI v. KHERBADJI HORMASJI* . . . 7 Bom., O. C., 180

3. ——— *Promise to pay money and grain—Promissory note.*—A document which contains a promise to pay money and a certain quantity of grain is not a promissory note for the purpose of the General Stamp Act, 1869, s. 28. *MUTTU CHETTI v. MUTTAN CHETTI* . . . I. L. R., 4 Mad., 296

4. ——— *Promissory note—Admissibility in evidence.*—In a suit brought on the following document, dated 25th October 1869: "Whereas I, defendant, have borrowed R1,500 from you without interest without a bond, hence I declare that I shall repay, on or before 15th Falgun, the whole amount as one sum and take back this chitta: should I fail to repay the amount in question on the above date, I will pay interest on the same,"—it was objected that, the document being unstamped under s. 3, Act X of 1862, the Stamp Act in force at the date of its execution, it was inadmissible in evidence, and it was contended for the plaintiff that it was admissible on payment of the penalty. The Judge applied s. 28, Act XVII of 1869, and held he had no power to receive it on payment of the penalty. *Held* the Judge was bound to comply with Act XVIII of 1869, and was therefore right in refusing to receive the document. *Held* also the document was a promissory note within s. 28, Act XVIII of 1869. *NANDAN MISSEER v. CHATTER BATI*
[13 B. L. R., Ap., 33]

S. C. NUNDUN MISSEER v. CHITTUR BUTTEE
[21 W. R., 446]

5. ——— *Promissory note—Insufficiency of stamp.*—The following document, bearing a one-anna stamp, was admitted by the Court of first instance and accepted by the lower Appellate Court as bearing a sufficient stamp: "My dear sister M—Be it known that R750 on account of the former note of hand and R225 of to-day's date, amounting in all to R975, are due to you by me. I promise to pay you this sum in two months. I am already negotiating for a loan from another place. Rest assured no harm will come to your money, and for your satisfaction and security this note of hand is given to you. Keep this as a voucher and consider the former note of no use. At the time of payment this note is to be returned to me." *Held* that the document was a promissory note, and should have borne a stamp of 12 annas. The deficiency in the stamp could not have been supplied when the document was offered in evidence. *M ARBUL AHMAD v. IFTIKHARUNNISSA BEGUM* . . . 7 N. W., 124

6. ——— *Document on one-anna stamp—Admissibility in evidence on payment of penalty.*—A promissory note upon a one-anna stamp dated in August 1870 provided for the repayment

STAMP ACT (XVIII OF 1869)—continued

of the amount mentioned in it on or before the 12th July 1871. In a suit upon the promissory note,—*Held* that it was not receivable in evidence upon payment of a penalty **CHINNA PERUMAL NAICKER v. ANNAMALAI** 7 Mad., 361

1 ————— s 29—*Prosecution by Collector—Intention to evade payment of stamp duty*—A Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under s 29 of Act XVIII of 1869, had any intention to defraud by evading payment of stamp duty **KMPRESS v. DWARKANATH CHOWDHRY** 1 L. R., 3 Calc., 399

2 ————— *Intention to evade payment of duty—Donor and donee of deed of gift—Intention to evade payment of stamp duty is not an essential ingredient in the offence described in s 29 of Act XVIII of 1869* *Held* that the donor under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section **ADONIMOTS** 6 Mad., Ap., 5

ss. 34 and 41 and sch II, arts 5 and 20—*Collateral instrument—Policy of Insurance—Assignment and re transfer by endorsement*—A policy of insurance bore three endorsements the first, an assignment of all the right, title, and interest of the assured to the P Bank, the second a retransfer from the P Bank to the assured, all claims having been satisfied, the third, an assignment by the assured similar to the first assignment to Messrs B R S & Co *Held* by **MARKBY and ALANBY, JJ.**, that the first and third endorsements were liable, as collateral instruments under sch II, art 20, of the General Stamp Act, to a stamp of one rupee, and that the second endorsement was not chargeable with stamp duty *Held* by **GARTH, C.J.**, that none of the endorsements were chargeable with duty **IN THE MATTER OF THOMPSON'S POLICY** 1 L. R., 3 Calc., 347

ss 39 40 *Promissory note—Evidence*—A promissory note not payable on demand, executed on unstamped paper, was brought to a Collector, under s 39 of Act XVIII of 1869, for adjudication as to the proper stamp, who, upon the payment of the penalty, returned the note to the maker **DAS v. . .**

s 43
See COLLECTOR 1 L. R., 2 All., 806
See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—STAMP ACT 1869
[1 L. R., 3 Calc., 622]

1 ————— sch I and sch. II, art II—*Bond for payment of money*—The plaintiffs drafted the following letter, dated 5th June 1871, and sent it to the defendant for signature "I have this day sold to you 500 to 700 cases of first quality of hogs' lard of my manufacture and mark at Rs 3 per case of eight tins of ten seers each, or two bazar maunds

STAMP ACT (XVIII OF 1869)—continued.

nett, as usual, delivery to be given and taken in all twelve months, as it is prepared, by instalments of forty to sixty cases at a time from my manufactory, commencing from this day. Cash on delivery of each lot. I engage not to sell any hogs' lard to any party besides yourselves, nor to make any shipments during the term of this contract without first obtaining your consent."

of hogs' lard when ready and after I have given you notice in writing, you must render yourselves similarly liable to a penalty of Rs 5000 as and by way of liquidated damages." This letter was signed by the defendant, and, as the plaintiffs alleged, formed the contract between them. The letter bore a stamp of one anna. In an action for a breach of the contract, it was tendered in evidence by the plaintiffs and objection was taken to it that it was insufficiently stamped, and that it required an *ad valorem* stamp as being a bond for the payment of money under Act XVIII, of 1869, sch I. *Held* it was a document which required an 8 anna stamp only under art 11 of sch II of the Act and the document was admitted on payment of the stamp and penalty **ROBERT AND CHARBOL v. SHIRORE**

[7 B L R., 510]

2 ————— *Letter assigning chose in action out of British India*—A letter by which a chose in action (a debt) was equitably assigned does not require a stamp where the chose in action is not in British India at the time of the assignment. **MEGHI HANSRAJ v. RAMJI JOTTA**

[8 Bom., O C., 189]

1 ————— art. 15—*Conveyance—Shares in public company—Amount*—"No ad

that Act signifies the sum total, or amount of money, forming the consideration, and the words "or secured" apply only to cases of mortgages and the like, not to an out and out conveyance **IN THE MATTER OF PORT CANNING LAND COMPANY**

[16 W. R., 208]

2 ————— *Conveyance—Indemnify bond*—Where a document, purporting to be a

1 L. R., 1 Mad., 133

1 ————— sch II, art. 5—*Adjustment of account*—An adjustment of account is not admissible

STAMP ACT (XVIII OF 1869)—continued.

in evidence unless stamped with a one-anna stamp.
TARINNY CHURN NUNDY v. ABDUR ROHMAN

[2 C. L. R., 346]

2. ————— *Balance of running account.*—In a running account, a balance brought forward from the close of a previous year is not to be considered a new balance requiring a fresh stamp; Act XVIII of 1869, sch. II, art. 5, providing for one stamp only to be affixed in such a case. INDRA CHAND ASWAL v. KALEE DOSS MITTER

[24 W. R., 439]

3. ————— *Note or memorandum balancing an account.*—On the 4th October 1875 the book containing the accounts between the plaintiff and defendant kept by the plaintiff was examined by the parties and a balance was struck in the plaintiff's favour which was orally approved and admitted by the defendant. In a suit by the plaintiff for the amount of this balance "on the basis of the account book,"—*Held* that the entry of the balance struck, not being signed by the defendant, was not a note or memorandum of the kind mentioned in art. 5, sch. II of Act XVIII of 1869, and did not therefore require to be stamped. NAND RAM v. RAM PRASAD

[I. L. R., 2 All., 641]

4. ————— *Hath-chitta—Balance of accounts.*—A hath-chitta, drawn up by only one of two parties to a money transaction, and purporting to represent the balance of accounts between them but not assented to in any way by the other party, is not such a document as is contemplated by art. 5, sch. II of the General Stamp Act, and does not require to be stamped. KOONJO MOHUN DOSS v. KRISHNA CHUNDER SHAHA

25 W. R., 361

5. ————— *Stamp on entry in hath-chitta.*—When an account in a hath-chitta has two sides to it, the one headed "amount advanced" and the other headed "amount received," and the amount actually due on such account varies from time to time, and depends upon the relation of the amount advanced to the amount received, and the signature or seal of the borrower is affixed to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under art. 5, sch. II of Act XVIII of 1869. BROJENDER COOMAR v. BROMOYE CHOWDHREANI

[I. L. R., 4 Calc., 885; 3 C. L. R., 520]

BROJO GOBIND SHAHA v. GOLUCK CHUNDER SHAHA

I. L. R., 9 Calc., 127

art. 5 and art. 11.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS . I. L. R., 4 Calc., 213

art. 7—*Bank memorandum—Receipt.*—A bank memorandum informing one of their customers that money has been paid to his account by a third person, and has been credited to that account, does not require to be stamped under art. 7, sch. II of Act XVIII of 1869. IN THE

STAMP ACT (XVIII OF 1869)—continued.

MATTER OF ACT XVIII OF 1869, AND OF THE UNCOVENANTED SERVICE BANK

[I. L. R., 4 Calc., 829; 3 C. L. R., 597]

1. ————— art. 11—*Agreement to remunerate pleader for his services.*—Where a pleader is to receive a remuneration under a special agreement contained in his vakalatnama, or in a separate document, the document containing the agreement must bear a stamp of adequate value. NUTHOO LALL v. BUDDEE PERSHAD

3 Agra, 286

2. ————— and s. 14—*Agreement—Bond.*—When an instrument consisted of two parts, the first containing a promise to repay with interest a sum of Rs. 12-8-0 and the second a further promise to give a quantity of grain,—*Held* that, as an agreement, the instrument required a stamp of 8 annas under s. 14 of Act XVIII of 1869 and sch. II, art. 11; but that, as a simple money bond, it was properly stamped with a stamp of 2 annas, and that, if the promisee abandoned his claim for grain, he could recover upon it the principal sum advanced with interest. CHIMNAJI v. RANU

I. L. R., 4 Bom., 19

3. ————— *Bond—Agreement with covenant sounding in damages.*—An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond, and requires an 8-anna stamp only. Remedies on such an instrument and on a bond discussed. GIBBORNE & Co. v. SUBAL BOWRI

[I. L. R., 8 Calc., 284; 10 C. L. R., 219]

4. ————— and sch. I, art. 5—*Bonds for performance of contracts of public works.*—A contract taken by the Department of Public Works for the execution of works falls within art. 11, sch. II, Act XVIII of 1869, and must bear a stamp of 8 annas. Where a contractor's sureties give bonds for the performance by him of his agreement, the bonds are chargeable with duty under art. 5, sch. I. ANONIMOUS

13 W. R., 353

5. ————— *Agreement.*—A postscript to a document contained a stipulation that the defendant should return two promissory notes deposited with him when a certain house was given back to him in good order. *Held* that the document required a stamp of 8 annas under Act XVIII of 1869, sch. II, art. 11. MOTILAL v. MUNSHOOK KURAMCHAND

I. L. R., 4 Bom., 328

6. ————— *Receipt for money and stipulating payment of interest.*—An instrument which acknowledged receipt of a sum of money and provided for the payment of interest at a specified rate per mensem was held to be an agreement falling within Act XVIII of 1869, sch. II, art. 11. FERRIER v. RAM KALPA GHOSE

23 W. R., 403

art. 13—*Power of attorney under Registration Act, 1871, s. 33.*—For a power of attorney executed under the provisions of s. 33 (a) of the Registration Act of 1871 Act (VIII of 1871), a stamp of 8 annas is sufficient under art. 13, sch. II of the General Stamp Act (XVIII of 1869). IN RE KESHAV KASINATH

9 Bom., 43

STAMP ACT (XVIII OF 1869)—concluded

art 15—Schedule appended to deed of sale—Collateral instrument—A schedule appended to a deed of sale does not require to be stamped under the provisions of Act XVIII of 1869
ANONYMOUS 6 Mad, Ap, 36

1 art 32—Power of attorney
—An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work is not an assignment of money, but a power of attorney, and is covered by a stamp of Rs whatever may be the amount recoverable under it BHAGVANDAS KISHORDAS v ABDUL HUSSIN MAHOMED ALI

[I L R, 3 Bom, 49]

2 Vakalatnama—A vakalatnama authorizing a pleader to receive during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit or in consequence of the order or decree of the Court in such suit, does not require a stamp under Act XVIII of 1869 ANONYMOUS I L R, 3 Calc, 767

C. IN THE MATTER OF ACT XVIII OF 1869

[8 C L R, 13]

art 38—Instrument of transfer—The accused was prosecuted under Act XVIII of 1869, s 29, for executing a document on

of the said land the said vendors have given me 4

dore and me, the purchaser, hence I have executed this chitti by way of conveyance or deed of exchange which may be of service when required" This document bore a stamp of 8 annas, and it was executed only by the accused and presented by him for registration Held that the document was an instrument of transfer within the meaning of art 83 sch II, Act XVIII of 1869 PARESH v DWARRANATH CHOWDHRY. I L R, 2 Calc, 399

STAMP ACT (I OF 1879)

s 2, cl. 13—Specified property—An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement Held that the fund intended to be created under the agreement was not "specified property" within the meaning of s 2, cl. 13 of the Stamp Act REFERENCE UNDER STAMP ACT s 46 I L R, 11 Mad, 216

s. 3

See PROMISSORY NOTES, FORM OF,

[I L R, 18 Mad, 393]

STAMP ACT (I OF 1879)—continued

1. Hundi stamped with adhesive stamps—Admissibility in evidence—"Duly stamped"—The words "duly stamped" in s 3 of the Stamp Act signify "stamped or written upon paper bearing an impressed stamp" GIBBONS & Co v SUBAL BOWRI

[I L R, 8 Calc, 284. 10 I L R, 219]

2. sub s (4)—Bond—Promissory note—Where an instrument bearing date the 21st September 1881, stamped with an adhesive stamp of 1 anna, and attested, recited that an account was made up of the principal and interest due on a former bond executed by the defendant to the plaintiff, and that a certain sum was found due at the date of the instrument the defendant promising to pay interest at a certain rate on the sum thus found due and pay the principal on demand,—Held that the instrument was a bond within the definition given in Act I of 1879 and should be stamped accordingly BALKRISHNA TRIMBAK v GOVIND PAND NAIK I L R, 8 Bom, 297

3 Agreement—Bond—

I am of age & in sound mind & of sound

grain Where the value of such an instrument was ascertained to be less than Rs 10, it was held to be properly stamped as a bond with a stamp of 2 annas MAGANDAS KUMCHAND v RAMCHANDRA HIRAJI

[I L R, 7 Bom, 187]

4 Bond—A executed a document by which he promised to pay on demand Rs 16 to B The writer of the document signed the document as writer, for the purpose of attesting A's signature Held that the document was liable to stamp duty as a bond REFERENCE UNDER STAMP ACT, s 46 I L R, 10 Mad, 158

5 Bond—Contract for personal service—The defendant signed an agreement in England with a Railway Company whereby he contracted to serve the Company exclusively for

stamped as a bond MADRAS RAILWAY CO v RUT
[I L R, 14 Mad, 18]

6 Bond—R executed a document, by which he promised to pay on demand Rs 120 with interest to S R The writer of the document and some others signed the document as witnesses Held that the document was a bond and liable to stamp duty as such REFERENCE UNDER STAMP ACT, s 49 I L R, 13 Mad, 147

STAMP ACT (I OF 1879)—continued.

7. ———— *Khata in the name of the debtor, but in the handwriting of another—Bond—Acknowledgment.*—A khata in the name of a debtor acknowledging the receipt of the amount advanced, and bearing the signature of the writer of the khata as writer of it merely, held to be an acknowledgment only, and not a bond, within the meaning of s. 3, sub-s. 1 (b), of the Stamp Act (I of 1879). *DULARH VANMALI v. REHMAN JAMAL* [I. L. R., 14 Bom., 511]

8. ———— and s. 61—*Acknowledgment of debt in writing—Attestation by witnesses—Bond.*—Documents which are in form acknowledgments only are not converted into bonds, as defined in s. 3, sub-s. 4 (b), of the Stamp Act (I of 1879), merely because they contain memoranda as to the rate of interest at which the loan is made and are attested by witnesses. No document can be a bond within the above section, unless it is one which by itself creates an obligation to pay the money. *HIRA LAL SIRCAR v. QUEEN-EMPERESS* [I. L. R., 22 Calc., 757]

9. ———— *Bond—Promissory note—Attestation by witness.*—A document by which the executant promised to pay to the person named therein a certain sum of money on a certain date with interest is not "attested by a witness" within the meaning of cl. (b) of sub-s. 4 of s. 3 of Act I of 1879, merely by reason of its bearing on the face of it a statement by the scribe of the document, that the document was correct and was written by his pen. *REFERENCE UNDER STAMP ACT, s. 49*

[I. L. R., 17 All., 211]

10. ———— and sch. I, art. 5—*Court Fees Act, sch. II, art. 1 (b)—Petition to withdraw suit—Agreement—Bond.*—A petition, stamped as an agreement, having been presented to a District Court by the parties to a suit, informing the Court that they had entered into an agreement, whereby, *inter alia*, the defendant was bound to deliver to the plaintiff certain wood, and requesting that the suit might be removed from the file, the District Judge impounded it, levied a sum for insufficient stamp duty and a penalty, on the ground that it was a bond, and forwarded it to the Collector. Upon a reference made by the Board of Revenue at the instance of the Collector,—*Held* that the instrument was not a bond, but a petition to the Court, requiring a Court-fee stamp. *REFERENCE UNDER STAMP ACT, 1879*

[I. L. R., 8 Mad., 15]

11. ———— and sch. I, art. 11—*Promissory note—Bond—Impressed label—Impressed sheet—Rule 9 (a) of the Rules of Government of India of 26th February 1881.*—By a document dated 8th March 1882, which purported to be a promissory note attested by three witnesses and written on an impressed label of 2 annas, A promised to pay B before a certain date R135. *Held* that the document was a bond and must be treated as unstamped for the purposes of s. 34 of the Stamp Act, 1879. By a document, dated 23rd June 1880, stamped with an adhesive stamp of 1 anna, purporting to be a promissory note attested by two witnesses, A

STAMP ACT (I OF 1879)—continued.

promised to pay R56 to B or order, on demand. *Held* that the document was not a bond, but a promissory note. *REFERENCE UNDER STAMP ACT, 1879*

[I. L. R., 8 Mad., 87]

12. ———— and sub-s. (13)—*Bond—Mortgage—Stamp Act, 1879, ss. 7, 26, and sch. I, arts. 13, 41.*—A grower of sugarcane executed a deed whereby he borrowed a sum of R25 as "earnest money" and covenanted to deliver to the lender on a certain date 21 maunds of rab (unrefined sugar) upon which he was to receive a profit of 9 annas per maund over and above a price to be thereafter fixed at a meeting of growers. He further covenanted as follows: "If the supply of the rab be less than the fixed quantity, and the money still remains due, then the said money thus due, including the profits, shall be paid at the rate of R1 per maund; that in case of my not supplying the rab at all, or selling it at some other place, I will pay the whole amount at once, including the said profits." As collateral security, he hypothecated the produce of a field of sugarcane, the value of which was not stated. *Held* by the Full Bench that the instrument was a "mortgage-deed" within the meaning of s. 3, sub-s. (13), and art. 44 (b) of sch. I of the Stamp Act (I of 1879). *Held* by STUART, C.J., STRAIGHT, J., and BRODHURST, J., that it was also a "bond" within the meaning of s. 3, sub-s. 4 (c) and art. 13 of sch. I and with reference to the provisions of s. 7 was chargeable with stamp duty solely as a bond under art. 13, the contract being a single one. *Held* by the Full Bench that the proper stamp duty payable on the instrument was four annas. *Held* by STUART, C.J., and STRAIGHT, J., that in estimating the stamp-duty payable on the instrument, the amount stipulated to be paid by way of penalty in case of breach of the covenant to deliver the rab must be taken into account. *Reference by Board of Revenue, N.-W.P., I. L. R., 2 All., 654*, doubted, and *Gisborne v. Subal Bowri, I. L. R., 8 Calc., 294* referred to by STRAIGHT, J. *Per* STUART, C.J., that for the purpose of estimating the stamp duty, the amount secured by the instrument was R25, the amount borrowed, plus R11-8, the amount to be paid to the borrower on the 21 maunds at 9 annas per maund, and that the additional profit, *i.e.*, the price fixed at the meeting of growers, not having been ascertainable at the time of execution, fell within the provisions of s. 26 of the Stamp Act, and could not have the effect of adding to the stamp duty. *Per* OLDFIELD, J., that the amount secured or limited, to be ultimately recoverable under the instrument, was R25, the amount borrowed, plus R21, the sum recoverable at R1 per maund, in the event of the borrower's non-delivery of the 21 maunds; and stamp-duty was payable on this amount. *IN THE MATTER OF GAJRAJ SINGH*

[I. L. R., 9 All., 585]

13. ———— and s. 23—*Bond—Interest.*—A bond for a loan of R100 stipulated that the obligor should "pay twice the amount, including R100 for interest, total R200, in eight years from 1301 to 1308, according to kists given in the schedule" *Held* that the amount secured by the

STAMP ACT (I OF 1879)—continued.

bond was Rs200, and the bond must be stamped accordingly. S 2s of the Stamp Act (I of 1879) did not apply to the instrument. **SANBHU CHANDRA BEPARI v KRISHNA CHARAN BEPARI**

[I. L. R., 28 Calc., 179]

14 ——— and sch I, art. 13

—**Bond—Attestation**—A company agreed to pay £220,000 in five instalments for the cost of constructing a railway, on the terms, among others, that debentures on the railway should be handed over to the company on each payment being made, and that, in the event of the other party failing to perform his liabilities as to the construction of the railway, the company should be entitled to sell the debentures, and also to recover damages, and also to discontinue payments of the above instalments. It was also provided that the company should be at liberty to retain £40,000 as compensation for risk, expenses etc. The agreement was sealed with the seal of the company in the presence of two Directors and the Secretary. *Held* that the instrument was liable to stamp duty as a bond for £220,000 under Act I of 1879. **REFERENCE UNDER STAMP ACT, s 46**

[I. L. R., 15 Mad., 193]

■ 3, sub-s (6)—**Order for payment of money on a person not a banker**—The plaintiff agreed to lend money to the defendant for payment of his trade debts, etc. In pursuance of the agreement the defendant gave his creditors "chits" for certain sums. These "chits" were addressed to the plaintiff, and requested him to pay the amounts mentioned therein. He did so, and then sued for the amount advanced. It was contended by the defendant that the "chits," being cheques or bills of exchange, were inadmissible in the evidence, because unstamped. The Court found that by the agreement the plaintiff was not constituted the defendant's banker within the meaning of sub s 6, s 3 of the Stamp Act, 1879. *Held* that the "chits" did not require a stamp. **RATULAL RANGILDAS v VISHNUKHAN LABADHURAM**

[I. L. R., 17 Bom., 684]

• 1 ——— s. 3, sub s (9)—**Conveyance—Transfer by trustee to cestui que trust—Release**—Where three executors of a will purported to convey by deed to one of them, in consideration of a sum of Rs10, a house to which the latter was entitled under the will.—*Held* that the deed, having been drawn in the form of a conveyance, was liable to stamp duty as such. **REFERENCE UNDER STAMP ACT, 1879**

[I. L. R., 7 Mad., 350]

■ ——— and sub s (11) and (19)—**Deed of family arrangement**—By a deed of family arrangement, one brother conveyed a pargunnah and the sum of two-and-a-half lakhs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims. *Held* that the deed was neither a conveyance or a settlement, nor an instrument of partition, within the meaning of Act I of 1879. **IN THE MATTER OF THE MAHARAJA OF DURGHOOGAH**

[I. L. R., 7 Calc., 31]

STAMP ACT (I OF 1879)—continued.

3 ——— **Conveyance—Transfer of land in pursuance of compromise**—A transfer of land, in pursuance of a compromise of a widow's suit for maintenance, is a conveyance, and must be stamped accordingly. **REFERENCE UNDER STAMP ACT, s 46** **I. L. R., 21 Mad., 422**

1 ——— s 3, sub-s (10)—**Unduly stamped—Rule 5 (e) of the Government of India, 3rd March 1883 (attestations of plain sheets subjoined to stamped documents), ultra vires**—Of the rules, dated 3rd March 1883, issued by the Governor General in Council, under ss 9, 15, 17, 32, 51, and 56 of the Stamp Act 1879, rule 5 (e) requires that the part of an instrument which is written on plain sheets of paper attached to the stamped paper must be attested by the parties executing, and by the witnesses to the document. *Held* by KEENAN, MURTHUSAMI AYYAR, and BRANDT, JJ (TURNER, C J, dissenting), that the rule is *ultra vires* and inoperative for the purpose of declaring an instrument, written contrary to the provisions thereof, unduly stamped within the meaning of s 3 (10) of the Act. **Per TURNER C J**—An instrument not written in accordance with the directions in rule 5 (e) is not duly stamped. **REFERENCE UNDER STAMP ACT, 1879** **I. L. R., 8 Mad., 532**

2 ——— **Duly stamped—Document issued without endorsement required by rules passed and published under ss 65 and 67**—The omission of a stamp vendor to endorse on a stamped paper the particulars required by rule (D) of the revised rules published under ss 55 and 57 of the Indian Stamp Act, 1879, by the Government of Madras, with the approval of the Governor General in Council does not render a document "not duly stamped" within the meaning of s 3 (10) of the Stamp Act, 1879. **REFERENCE UNDER STAMP ACT, s 46** **I. L. R., 11 Mad., 377**

3 ——— **Instrument professing to effect a partition ultra vires of the estate—Instrument of partition**—Persons incorrectly purporting to be co-owners of certain property agreed to divide it in severalty by written documents. *Held* that the arrangement fell within the definition of "instrument of partition" in the Stamp Act, 1879. **REFERENCE UNDER STAMP ACT, 1879**

[I. L. R., 12 Mad., 198]

4. ——— **Instruments duly stamped**—**Rule 5 (b) of the rules made by the Governor-General in Council under Notification No 1298 of 3rd March 1882**—The absence of the certificate required by rule 5 (b) of the rules, dated 3rd March 1882 issued by the Governor General in Council, under ss 9, 15, 17, 32, 51, and 56 of the Stamp Act (I of 1879), does not make the document in question not "duly stamped" within the intention of the Stamp Act. **QUEEN EXPRESS v TRILAKYA NATH BARAL** **I. L. R., 18 Calc., 39**

5. ——— **Promissory note not chargeable with duty of 6, 10, or 12 annas**—Such promissory note written on impressed sheet of proper value bearing the word "hund."—*Note duly stamped*—**Rules by Governor-General in**

STAMP ACT (I OF 1879)—continued.

Council under s. 9 of Stamp Act—Notification No. 1288 of 3rd March 1882. rules 3, 4, 6—Notification No. 2955 of 1st December 1882, rule 6A.—The effect of Notification No. 2955 of the 1st December 1882, amending the rules made by the Governor-General in Council under s. 9 of the Stamp Act (I of 1879) and published in Notification No. 1288 of the 3rd March 1882, is not to prohibit all promissory notes except those chargeable with a duty of 6, 10, or 12 annas being written on impressed sheets bearing the word "hundi." A rule which says that certain promissory notes shall be written on impressed sheets bearing the word "hundi" cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value if it happens to bear the word "hundi." A promissory note for an amount not exceeding Rs. 200, payable otherwise than on demand, but not more than one year after date, and requiring a stamp of two annas, is duly stamped if written on an impressed sheet of the value of two annas, though that impressed sheet bears the word "hundi." **RADHA BAI v. NATH RAM**. . . I. L. R., 18 All., 66

6. ———— and s. 34—Rules 4 and 6 of rules made under s. 9 of the Stamp Act—Promissory note—Hundi stamp.—In a suit on a promissory note for Rs. 300, which was executed on an impressed sheet bearing an impressed stamp with the word "hundi" at the top and the words "three rupees" at the bottom of the impression.—Held that, with reference to rules 4 and 6 of the rules made under s. 9 of the Stamp Act and dated 3rd March 1882 and the 1st December 1882, the instrument was "duly stamped" as to the amount of duty, and was admissible in evidence. **BANK OF MADRAS v. SUBBARAYALU**

[I. L. R., 14 Mad., 32]

1. ———— s. 8, sub-s. (11)—Partition deed—List of divided property—Agreement to divide cut-standings.—In a document signed by the members of a Hindu family and attested by witnesses, which purported to be an account or list of the share of one member of the family in the family property, it was recited that the parents of the family were to enjoy certain lands, and that the outstanding debts should be divided at a future date. Held that this document was not liable to stamp duty as a partition deed. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 385]

3. ———— Award of arbitrators for division of family property—Written agreement to effect division according to the terms of the award. Effect of—Division of the property in severalty—Partition deed.—The co-shraders in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrators.—Held that the instrument was an agreement to divide the property in severalty, and was therefore a partition deed within the definition in sub-s. (11) of s. 3 of the General Stamp Act (I of 1879). **IN RE VASANJI HARIBHAI**

[I. L. R., 15 Bom., 677]

STAMP ACT (I OF 1879)—continued.

8. ———— and s. 29, and sch. I, art. 37—Instrument of partition—Computation of value of property.—Held that the words "the final order" used in the definition of an "instrument of partition" in Act I of 1879 mean not the order authorizing a partition to proceed, but the order passed after the partition has been made declaring the various allotments of land. Also that the stamp duty chargeable under that Act on an instrument of partition is chargeable in respect of the entire property sought to be divided, and not merely in respect of that portion of it allotted to the applicant for partition. Also that, for the purposes of that Act, the value of the property is to be computed with reference to its market value, and not with reference to the Court Fees Act, 1870. REFERENCE BY BOARD OF REVENUE . . . I. L. R., 2 All., 664

4. ———— and s. 29 (e)—Instrument of partition.—Three out of seven brothers, constituting an undivided Hindu family, executed documents whereby each acknowledged the receipt of certain property made over to him, "a division of family property having been effected," and acknowledged himself liable for one-seventh of the debts of the family. One of the documents contained a clause to the effect that the executant had no further claim on property of the family.—Held that the documents should be stamped as instruments of partition, each member paying according to the share taken by him under the partition. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 164]

1. ———— s. 8, sub-s. (18)—Definition of "mortgage"—Transfer of Property Act (IV of 1882).—For the purpose of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act, not as defined in the Transfer of Property Act. **QUEEN-EMPRESS v. DEBENDRA KRISHNA MITTAL**

[I. L. R., 27 Cal., 587
4 C. W. N., 524]

2. ———— Mortgage—Indemnity bond.—An agreement entered into by the Secretary of State and a salt contractor recited that the contractor had deposited certain promissory notes to secure the due fulfilment of the contract, and provided that the promissory notes should be returned on the due fulfilment of the contract. Held that the agreement was a mortgage as defined by the Stamp Act. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 11 Mad., 39]

8. ———— Lease—Mortgage.—An instrument, therein described as a lease, was executed in consideration of one hundred and twenty rupees, and it provided that the party paying that sum should remain in possession of certain land for twelve years, but contained no provision for repayment of that sum or for the payment of rent. Held that the instrument was a usufructuary mortgage, and not a lease. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 21 Mad., 358]

STAMP ACT (I OF 1879)—continued

1. — s 3, sub-s. (15)—*Policy of insurance or memorandum of proposed insurance—Document on the face of it not contemplating necessity of any other formal document—A document not being a mere “slip” or memorandum of a proposed insurance, and mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium, and providing for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and lastly, expressly guaranteeing payment of losses and claims settled under it, and which, on the face of it, does not contemplate the necessity of any other document of a more formal character being passed to the assured, requires to be stamped as a policy under sub s (15), s 3 of the Stamp Act (I of 1879) IN RE MARINE INSURANCE CERTIFICATE I. L. R., 19 Bom., 130*

— and s 25—*Policy of insurance—Uncoenanted Service Family Pension Fund, Stamp on entrance certificate of—An entrance certificate granted under the rules of the Uncoenanted Service Family Pension Fund is a life policy within s 3 (5) of the Stamp Act for an amount not exceeding Rs1000 and is therefore chargeable with a duty of 6 annas such an instrument is not within the scope of s 25 (c) of the Stamp Act. REFERENCE UNDER STAMP ACT, 1879 s 46 I. L. R., 19 Cal., 499*

— s 3, sub s (17)—*Receipt—Memorandum of payment—Document containing no*

that money was received IN RE JAMNADAS HANVADA I. L. R., 23 Bom., 54

1 — s 3, sub s. 19 (b)—*Settlement—Gift—The word “settlement,” as defined in s 3 of the Stamp Act suggests the creation of a separate interest in favour of several persons who may have a legal or moral claim on the settlor or for whom he may desire to make a provision Held therefore that where because of natural affection, a person*

2. — *Settlement—Gift—An instrument whereby a life interest in land is created with remainder to the settlor and his heirs is a settlement within the meaning of the Stamp Act. REFERENCE UNDER STAMP ACT, s 46*

(I. L. R., 21 Mad., 422)

STAMP ACT (I OF 1879)—continued.

■ 5

See POWER OF ATTORNEY

[I. L. R., 23 Cal., 187

— s 6—*Endorsement of consent of relative and co sharer on deed of conveyance—Document completing transaction—The document marked A was a document on a three rupee stamp paper executed by H to an V purporting to convey to him certain immoveable property absolutely for the consideration of Rs275 On the same deed of sale A, the undivided nephew of the executant, endorsed his consent to the sale Held that the endorsement of consent and the conveyance were several instruments employed to complete a transaction within the contemplation of s 3 of the Stamp Act (I of 1879), and the consent ought to have been written on a separate stamp paper of the value of one rupee. IN THE MATTER OF HANVADA I. L. R., 19 Bom., 281*

1 — s. 7, and s 3, sub s (4), sch. I. art 5—*Bond—Agreement with penalty in case of breach—One of the clauses of an instrument by which one party to the instrument bound himself in the event of a breach on his part of any of the conditions of the instrument to pay the other party thereto a penalty of Rs5000, being regarded as a “bond,” within the meaning of Act I of 1879 such instrument, if that clause were not so regarded, being an agreement chargeable under that Act with a stamp duty of 8 annas—Held (STUART C.J., dissenting) that the instrument was chargeable under s 7 of that Act, with the stamp duty leviable on a bond for Rs5000 Per STUART, C.J.—That,*

only chargeable with a stamp duty of 8 annas REFERENCE BY BOARD OF REVENUE

(I. L. R., 2 All., 654

2 — *Contracts for several loans of rice on a single bond—Construction—Sixteen persons borrowed a quantity of rice from the plaintiff, and executed to him a bond for the debt,*

instrument should be regarded as comprising sixteen

3 — para 2—*Stamp duty—Lease—Pottah—Mortgage—By an instrument*

from the rent of each year, a portion should be deducted in payment of A's debt to B, so that in this way the whole debt should be paid by a series of instalments extending over the term of the lease. The instrument also contained the usual clauses found

STAMP ACT (I OF 1879)—continued.

in pottahs. On the question what was the proper amount of stamp duty leviable on the document,—*Held* that, though the arrangement intended to be effected was partly a lease and partly an usufructuary mortgage, yet the instrument came within the provisions of s. 7, para. 2, of the Stamp Act, and should be stamped as a mortgage only. **IN THE MATTER OF A REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE GENERAL STAMP ACT. EX-PARTE HILL**

[I. L. R., 8 Calc., 254; 10 C. L. R., 33]

4. ———— *Lease and mortgage combined in one document—Stamp Act (I of 1879), s. 3, sub-s. (13).*—A zamindar leased certain land in his village to some cultivators at a rent of Rs 365 per annum in cash and of certain cart-loads of straw and grass, by a document which also contained an agreement by the lessees hypothecating certain other property belonging to them for the purpose of securing the payment of the agreed rent, and for the performance of the engagement for the delivery of the other articles. *Held* that the document above referred to should be stamped as a mortgage-deed according to the definition contained in s. 3, sub-s. (13) of Act I of 1879, and also that it fell within the second paragraph of s. 7 of the above Act. *Ex-parte Hill, I. L. R., 8 Calc., 294, referred to. REFERENCE UNDER STAMP ACT, s. 49* I. L. R., 17 All., 55

5. ———— and art. 54—*Release—Debts—Annuity.*—*J* and *S* passed to their brother *E* an instrument which set forth (1) that *J* and *S* relinquished their right to certain property in favour of *E*; (2) that *E* was to discharge certain debts; and (3) that *E* was to pay to *J* and *S* an annuity. *Held* that the provisions in favour of *J* and *S* were a mere recital of the consideration moving from *E*; that no interest was created in favour of *J* and *S*; and that therefore the instrument should be stamped as a release only. **EKNATH S. GOWNDE v. JAGGANATH S. GOWNDE** I. L. R., 9 All., 417

——— s. 10—*Hundi.*—A hundi for a sum of Rs 80, payable otherwise than on demand, cannot be stamped with an adhesive stamp. The words "drawn or made out of British India" in cl. (b) of s. 10 of the Stamp Act of 1879 apply to the entire clause. **DEVAJI v. RAMAKRISHNAH**

[I. L. R., 2 Mad., 173]

——— s. 11 and ss. 61, 62—*Instrument requiring to be stamped before or at time of execution—Non-cancellation of adhesive stamp—Sanction to prosecution.*—The first paragraph of s. 11 of the General Stamp Act (I of 1879) applies to cases in which the instruments chargeable with duty may be stamped after execution. A bill for the monthly salary of a Government official was sent to the treasury for payment, when it was discovered that the one-anna receipt stamp affixed thereto was not cancelled, and a prosecution was thereupon instituted by the Collector against the official in question, who had executed the instrument, under s. 62 of the General Stamp Act. The accused was convicted under that section by the Deputy Magistrate, and the District

STAMP ACT (I OF 1879)—continued.

Magistrate on appeal, holding that, upon the evidence, the conviction should have been for abetment and not for the principal offence, altered the finding accordingly to a conviction under s. 109 of the Penal Code, read with ss. 11 and 62 of the General Stamp Act. *Held* that the receipt to the salary bill in question was an instrument which was required to be stamped before or at the time of execution, and was not of the kind contemplated by the first paragraph of s. 11 of the General Stamp Act; that consequently there was no abetment of any offence under ss. 11 and 62 of the Act; that the offence which appeared to have been committed was one under the second paragraph of s. 61; but that, no sanction having been given by the Collector under s. 69 for a prosecution under s. 61, it was not advisable to interfere further than by setting aside the conviction and sentence. **QUEEN-EMPERESS v. RAHAT ALI KHAN** I. L. R., 9 All., 210

——— s. 12 and s. 7—*Contract by principal and surety on same stamp paper, but separately written—Writing on the reverse of a stamp paper—Government notifications under the Stamp Act, Force of.*—In a bond engrossed on a stamp paper of sufficient value, and dated the 19th April 1879, the contract of the principal was written first, and after his signature followed the contract of the surety, signed by the latter. The document commenced on the side other than that on which the stamp was impressed, and terminated on the side impressed with the stamp. The stamp was not in any way defaced, nor was the paper so written as to admit of the stamp being used again. *Held* that the bond constituted only one instrument, and was properly stamped, not being open to objection under ss. 7, 12, 13, and 14 of the Stamp Act, 1879. The construction of the words "on the face of the instrument," used in s. 12 of Act I of 1879, considered. *Quere*—Whether certain Government notifications—to the effect that an instrument, commenced on the side of the paper other than that on which the stamp is impressed and completed on the side on which the stamp is impressed, is, under s. 12 of Act I of 1879, to be treated as unstamped, and prohibiting writing on the reverse of an impressed stamped paper—are *ultra vires* as being more stringent than, and therefore inconsistent with, that Act? **DOWLATRAU HARJI v. VITHO RADHOJI**

[I. L. R., 5 Bom., 188]

1. ———— s. 13—*Suit on bond—Stamp, Sufficiency of.*—A bond stipulated that for the consideration of a loan of Rs 80 the debtor should deliver to the creditor on a future day "800 arris of grain valued at Rs 10 per 100 arris." The bond was engrossed on an 8-anna stamp paper. In a suit on the bond for the recovery of 800 arris at 4 arris per rupee or its price, Rs 200,—*Held* that the bond was adequately stamped. **BHAIRAB CHUNDRA CROWDHRI v. ALEK JAN** I. L. R., 13 Calc., 268

2. ———— and s. 34—*Money-bond—Endorsement of transfer.*—The endorsement of transfer written on a simple money-bond duly stamped requires a stamp, and can be stamped under s. 34 of the Stamp Act. **PRALHAD LAKSHMANRAU v. VITHU** I. L. R., 17 Bom., 687

STAMP ACT (I OF 1879)—continued

s. 16 and ss 11 and 34—*Hundi*—*tion and hundi*—*hundi was hundi with*

one anna stamp which was left uncancelled and the hundi was subsequently taken by him to the plaintiff's son who received it from him and at the time of receiving it cancelled the stamp by writing the date across it.—*Held* that the hundi was duly stamped under ss 10 and 16 of the Stamp Act (I of 1879) and was admissible in evidence. If at the time of delivery, which completed its legal character the hundi was stamped and if the cancellation took place at that time as part of the same transaction, it was sufficient. A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or if having been at any time previously affixed, it is cancelled at the time of execution. When applied to a document the term "execution" means the last act or series of acts which completes it. It might be defined as formal completion. The contract on a negotiable instrument until delivery is incomplete and revocable. Until delivery, a hundi is not clothed with the essential characteristics of a negotiable instrument. *BHAWANJI HARBHUN v. DEVI PRINJA*

[I L R, 19 Bom, 635]

§ 24—*Conveyance—Consideration—Agreement to pay assessment until transfer is made in Collector's books—Relinquishment of title*

A is agreed to pay the outstaring assessment until the transfer of the land to the name of the mortgage purchaser in the Collector's books.—*Held* that such an instrument was a conveyance of which the amount of the consideration calculated according to s. 4 of the General Stamp Act (I of 1879) was the original mortgage amount plus the amount mentioned in the instrument. *Held* also that the instrument was an agreement to pay assessment until the land conveyed was transferred in the Collector's books and as such should bear the additional stamp for an agreement namely, eight annas. *SINAPATA v. SHITALA*

[I L R, 15 Bom, 675]

§ 21 and sch I, art 16—*Certificate of sale*—The stamp duty payable on a certificate of sale is governed not by s. 21, but by art 16, sch. I of the Stamp Act, 1879. *Semble*—That when property is merely sold subject to a

§ 21—*Stamp on sale certificate—Property sold subject to a mortgage—Interest—Transfer of Property Act (IV of 1882), sub s 5 (d), s 65*—Where property is sold subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances, no part of the consideration-money for the purchase. The stamp duty payable on a document

STAMP ACT (I OF 1879)—continued

conveying such property is an *ad valorem* duty on the amount of the money paid as consideration for the sale. *IN THE MATTER OF ACT I OF 1879 IN THE MATTER OF A REFERENCE TO THE BOARD OF REVENUE I L R, 10 Calc, 92 : 13 C L R, 184*

§ 21—*Certificate of sale—Purchase money*—Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase-money in ascertaining the amount of the stamp duty leviable on the certificate of sale. Other claims should neither be entered in the certificate of sale nor computed as part of the purchase money. It is the duty of the purchaser to provide the stamp. *IN RE RAKKRISUNA*

[I L R, 9 Bom, 47]

§ 21 and sch I, arts 16 and 21—*Certificate of sale of property sold by public auction under order of Court—Sale subject to mortgage or lien—Mortgage debt—Interest—Consideration*—It has a certificate of sale, granted to the purchaser of property sold by public auction under an order of Court, has expressly set out that such sale is made subject to the mortgage right of a third party, the principal sum (but not the interest) due at the time of the sale on such mortgage is to be deemed "part of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty" under s. 2 of the Stamp Act so that the whole consideration in respect of which such sale is under arts 16 and 21 of sch I of that Act, liable to stamp duty is the sum of the purchase-money and the principal money so due on the mortgage. The certificate of sale therefore, whenever it is possible, should set out the exact amount that is due, at the time of the sale, in respect of the principal sum secured by the mortgage. *Semble*—It is otherwise if the mortgage be only recited in the proclamation of sale, and not expressly set out, as an existing incumbrance on the property sold, in the certificate of sale. Arrears of interest due on the mortgage are to be added to the principal sum.

§ 21 and sch I, art 16—*Certificate of sale*—The stamp duty payable on a certificate of sale is governed not by s. 21, but by art 16, sch. I of the Stamp Act, 1879. *Semble*—That when property is merely sold subject to a

Jeychand v. Halalkhore Nathwa Gheesla

[I L R, 15 Bom, 470]

§ 21 and sch I, art 16—*Certificate of sale—Sale in execution of decree*—Where property is sold at a Court sale subject to a mortgage lien, the stamp upon the certificate of sale should cover the amount for which the property was sold, as well as the amount of the mortgage lien reserved. *Nagindas Jeychand v. Halalkhore Nathwa Gheesla, I L R, 15 Bom, 470*, followed. *KAISUR KHAN MURAD KHAN v. ABRAHIM KHAN MUSA KHAN*

[I L R, 15 Bom, 532]

STAMP ACT (I OF 1879)—continued.

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[I. L. R., 8 Calc., 254; 10 C. L. R., 33

4. ———— *Lease and mortgage combined in one document—Stamp Act (I of 1879), s. 3, sub-s. (13).*—A zamindar leased certain land in his village to some cultivators at a rent of Rs 365 per annum in cash and of certain cart-loads of straw and grass, by a document which also contained an agreement by the lessees hypothecating certain other property belonging to them for the purpose of securing the payment of the agreed rent, and for the performance of the engagement for the delivery of the other articles. *Held* that the document above referred to should be stamped as a mortgage-deed according to the definition contained in s. 3, sub-s. (13) of Act I of 1879, and also that it fell within the second paragraph of s. 7 of the above Act. *Ex-parte Hill, I. L. R., 8 Calc., 293, referred to. REFERENCE UNDER STAMP ACT, s. 49* I. L. R., 17 All., 55

5. ———— and art. 54—*Release—Debts—Annuity.*—*J* and *S* passed to their brother *E* an instrument which set forth (1) that *J* and *S* relinquished their right to certain property in favour of *E*; (2) that *E* was to discharge certain debts; and (3) that *E* was to pay to *J* and *S* an annuity. *Held* that the provisions in favour of *J* and *S* were a mere recital of the consideration moving from *E*; that no interest was created in favour of *J* and *S*; and that therefore the instrument should be stamped as a release only. *EKNATH S. GOWNDE v. JAGGANNATH S. GOWNDE* I. L. R., 9 All., 417

——— s. 10—*Hundi.*—A hundi for a sum of Rs 880, payable otherwise than on demand, cannot be stamped with an adhesive stamp. The words "drawn or made out of British India" in cl. (b) of s. 10 of the Stamp Act of 1879 apply to the entire clause. *DEVAJI v. RAMAKRISHNIAH*

[I. L. R., 2 Mad., 173

——— s. 11 and ss. 61, 62—*Instrument requiring to be stamped before or at time of execution—Non-cancellation of adhesive stamp—Sanction to prosecution.*—The first paragraph of s. 11 of the General Stamp Act (I of 1879) applies to cases in which the instruments chargeable with duty may be stamped after execution. A bill for the monthly salary of a Government official was sent to the treasury for payment, when it was discovered that the one-anna receipt stamp affixed thereto was not cancelled, and a prosecution was thereupon instituted by the Collector against the official in question, who had executed the instrument, under s. 62 of the General Stamp Act. The accused was convicted under that section by the Deputy Magistrate, and the District

STAMP ACT (I OF 1879)—continued.

Magistrate on appeal, holding that, upon the evidence, the conviction should have been for abetment and not for the principal offence, altered the finding accordingly to a conviction under s. 109 of the Penal Code, read with ss. 11 and 62 of the General Stamp Act. *Held* that the receipt to the salary bill in question was an instrument which was required to be stamped before or at the time of execution, and was not of the kind contemplated by the first paragraph of s. 11 of the General Stamp Act; that consequently there was no abetment of any offence under ss. 11 and 62 of the Act; that the offence which appeared to have been committed was one under the second paragraph of s. 61; but that, no sanction having been given by the Collector under s. 69 for a prosecution under s. 61, it was not advisable to interfere further than by setting aside the conviction and sentence. *QUEEN-EMPRESS v. RAHAT ALI KHAN* I. L. R., 9 All., 210

——— s. 12 and s. 7—*Contract by principal and surety on same stamp paper, but separately written—Writing on the reverse of a stamp paper—Government notifications under the Stamp Act, Force of.*—In a bond engrossed on a stamp paper of sufficient value, and dated the 19th April 1879, the contract of the principal was written first, and after his signature followed the contract of the surety, signed by the latter. The document commenced on the side other than that on which the stamp was impressed, and terminated on the side impressed with the stamp. The stamp was not in any way defaced, nor was the paper so written as to admit of the stamp being used again. *Held* that the bond constituted only one instrument, and was properly stamped, not being open to objection under ss. 7, 12, 13, and 14 of the Stamp Act, 1879. The construction of the words "on the face of the instrument," used in s. 12 of Act I of 1879, considered. *Quere*—Whether certain Government notifications—to the effect that an instrument, commenced on the side of the paper other than that on which the stamp is impressed and completed on the side on which the stamp is impressed, is, under s. 12 of Act I of 1879, to be treated as unstamped, and prohibiting writing on the reverse of an impressed stamped paper—are *ultra vires* as being more stringent than, and therefore inconsistent with, that Act? *DOWLATRAM HARJI v. VITHO RADHOJI*

[I. L. R., 5 Bom., 188

1. ———— s. 13—*Suit on bond—Stamp, Sufficiency of.*—A bond stipulated that for the consideration of a loan of Rs 80 the debtor should deliver to the creditor on a future day "800 arris of grain valued at Rs 10 per 100 arris." The bond was engrossed on an 8-anna stamp paper. In a suit on the bond for the recovery of 800 arris at 4 arris per rupee or its price, Rs 200,—*Held* that the bond was adequately stamped. *BHAIRAB CHUNDRA CHOWDHRI v. ALEX JAN* I. L. R., 13 Calc., 268

2. ———— and s. 34—*Money-bond—Endorsement of transfer.*—The endorsement of transfer written on a simple money-bond duly stamped requires a stamp, and can be stamped under s. 34 of the Stamp Act. *PRALHAD LAKSHMANRAV v. VITHU* I. L. R., 17 Bom., 687

STAMP ACT (I OF 1879)—continued

— ss 16 and ss 11 and 34—*Hundi*—*Execution*—Stamp affixed at time of execution and subsequently cancelled on delivery of *hundi*—*Evidence*—*Admissibility of*—Where a *hundi* was written by the defendant and stamped by him with

that time as part of the same transaction it was sufficient. A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or

negotiable instrument until delivery is incomplete and retractable. Until delivery, a *hundi* is not clothed with the essential characteristics of a negotiable instrument. *BRAWANJI HAREHUM : DEVI PRASA*

[I L R, 19 Bom, 635]

1 — ss 24—*Conveyance*—*Consideration*—*Agreement to pay assessment until transfer is*

and also agreed to pay the Government assessment until the transfer of the land to the name of the mortgagee purchaser in the Collector's books—*Held* that such an instrument was a conveyance of which the amount of the consideration calculated according to s 24 of the General Stamp Act (I of 1879) was the original mortgage amount plus the amount mentioned in the instrument. *Held* also that the instrument was an agreement to pay assessment until the land

2 — and sch I, art 16—*Certificate of sale*—The stamp duty payable on a certificate of sale is governed not by s 21, but by art 16, sch I of the Stamp Act, 1879. *Semble*—That when property is merely sold subject to a

3 — Stamp on sale certificate—*Property sold subject to a mortgage*—*Interest*—*Transfer of Property Act (IV of 1882), sub s 5 (d), s 56*—Where property is sold subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances, no part of the consideration money for the purchase. The stamp duty payable on a document

STAMP ACT (I OF 1879)—continued

conveying such a property is an *ad valorem* duty on the amount of the money paid as consideration for the sale. *IN THE MATTER OF ACT I OF 1879 IN THE MATTER OF A REFERENCE TO THE BOARD OF REVENUE I L R, 10 Calc, 92 : 13 C L R, 164*

4 — *Certificate of sale*—*Purchase money*—Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase-money in ascertaining the amount of the stamp duty leviable on the certificate of sale. Other claims should neither be entered in the certificate of sale nor computed as part of the purchase money. It is the duty of the purchaser to provide the stamp. *IN RE RAMKRISHNA*

[I L R, 9 Bom, 47]

5 — and sch I, arts 16 and 21—*Certificate of sale of property sold by public auction under order of Court*—*Sale subject to mortgage or lien*—*Mortgage debt*—*Interest*—*Consideration*—Where a certificate of sale, granted to the purchaser of property sold by public auction under an order of Court, has expressly set out that such sale is made subject to the mortgage right of a third party, the principal sum (but not the interest) due at the time of the sale on such mortgage is to be deemed "part of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty" under s 2 of the Stamp Act so that the whole consideration in respect of which such sale is, under arts 16 and 21 of sch I of that Act liable to stamp duty is the sum of the purchase money and the principal money so due on the mortgage. The certificate of sale therefore, whenever it is possible, should set out the exact amount that is due, at the time of the sale, in respect of the principal sum secured by the mortgage. *Semble*—It is otherwise if the mortgage be only recited in the proclamation of sale, and not expressly set out, as an existing incumbrance on the property sold, in the certificate of sale. Arrears of interest due on the mortgage are to be excluded from such calculation, since s 23 of the Stamp Act—which enacts that "where interest is

to be calculated had been the document itself which stipulated for the payment of interest. *NAGINDAS JEYCHANDR HALALKHORE NATHWA GHEESLA*

[I L R, 3 Bom, 470]

6 — *Mortgage lien*—*Certificate of sale*—*Sale in execution of decree*—Where property is sold at a Court sale subject to a mortgage lien, the stamp upon the certificate of sale should cover the amount for which the property was sold, as well as the amount of the mortgage lien reserved. *Nagindas*

STAMP ACT (I OF 1879)—continued.

7. ————— and sch. I, art. 63—
Sale of leasehold property—Rent reserved not liable to ad valorem duty—Stamp duty leviable only on the actual consideration-money—Stamp Act (II of 1899), ss. 24, 25, sch. I, art. 63.—
 Certain leasehold property demised by the Secretary of State for India to the original lessee for a term of 999 years at the yearly rent of R39-11-0 was assigned to the trustees of a charity for the sum of R1,02,000, the trustees covenanting on their part to pay the rent reserved by the original lease. The deed bore a stamp of the value of R1,020, R1,02,000 having been assumed to be the consideration for the transfer. The Collector of Bombay referred to the High Court the question whether, under s. 24 of the Stamp Act (II of 1899), the payment of the rent reserved by the deed should not be taken as part of the "consideration" in respect whereof the transfer was chargeable with *ad valorem* duty. *Held* that the *ad valorem* duty was only payable on the consideration actually mentioned in the conveyance (*viz.* the amount of the purchase-money. REFERENCE UNDER STAMP ACT, 1899 I. L. R., 24 Bom., 257

s. 26—*Lease—Amount of rent for first year unascertainable—Stamp Act, 1869, s. 19.*—
 When the amount of rent payable for the first year cannot be ascertained in order to determine the proper stamp under sch. I, s. 19 (b) of the General Stamp Act, 1869, for a lease, and more rent is recovered than the stamp affixed warrants, the right to recover the rent due for the subsequent years is not affected. In such a case sufficient effect is given to s. 26 of the Stamp Act, 1879, by limiting the amount recoverable for the first year to the amount which the stamp will cover. COLLECTOR OF TANJORE *v.* RAMASAMIER
 [I. L. R., 3 Mad., 342

s. 31.

See DEBTOR AND CREDITOR.

[I. L. R., 16 Mad., 85

s. 34.

See PROMISSORY NOTES, FORM OF.

[I. L. R., 8 Calc., 645

1. ————— *Unstamped "promissory note" executed when Stamp Act, 1869, was in force—Admissibility of, as a "bond" on payment of penalty.*—An instrument which comes within the definition of a promissory note in the General Stamp Act, 1869, and is not duly stamped according to that Act (which was in force at the date of its execution), cannot be admitted in evidence upon payment of penalty under s. 34 of the Stamp Act, 1879, on the ground that it falls within the definition of a bond in the latter Act. The levy of a penalty authorized under proviso (1) of s. 34 of the Stamp Act, 1879, implies a punishment for neglect in failing to affix the proper stamp at the time of execution. The word "chargeable" in the above proviso means chargeable under the Act in force at the date of the execution of the instrument. NARAYANAN CHETTI *v.* KARUPATHAN . . . I. L. R., 3 Mad., 251

2. ————— *Unstamped transfer of mortgagee's interest, Effect of—Re-transfer of interest—Award, Effect of, on transfer—Unstamped*

STAMP ACT (I OF 1879)—continued.

instrument, Admissibility of, in evidence—Finding of fact based on conjecture—Fraud.—On the 17th September 1866 G gave Z an usufructuary mortgage of certain immovable property to secure the repayment of R7,101, purporting to be advanced by Z. As a fact, only R2,301 of that amount were actually advanced by Z, the balance, R4,800, being advanced by R. In 1868 Z sold the mortgagee's interest in the deed of mortgage to R for R2,301, the transfer being by endorsement and not being stamped. In April 1869 G transferred a portion of the mortgaged property to A. In September 1869 R su . . . transfer set aside, claiming in virtue of the deed of mortgage and the transfer endorsed thereon. On the 23rd September 1871 the Court of first instance refused to receive the transfer by endorsement in evidence and to proceed with the suit, because such transfer was not stamped. On the 20th April 1872 Z executed a stamped transfer of the mortgagee's interest in the deed of mortgage in favour of R. R treating the order of the 23rd September 1871 as an interlocutory one, presented the instrument of the 20th April 1872 to the Court, and prayed that it would proceed with the suit. The Court proceeded with the suit, and gave R a decree. This decree was reversed by the Court of first appeal, on the ground that that instrument did not cure the defect of the transfer by endorsement, and that the order of the 23rd September 1871 was final. The decree of the Court of first appeal was affirmed by the High Court in June 1873. Thereupon R made a criminal charge against Z of cheating in respect of the transfer by endorsement. This charge was eventually dropped and was followed by a reference to arbitration by R and Z. According to the agreement to refer, which was dated the 17th August 1874, the dispute between the parties was whether R should return the deed of mortgage to Z, and Z return the R2,301 to R or not. The arbitrators made an award, which was dated the 18th August 1874, which directed, *inter alia*, that Z should return the deed of mortgage to Z and Z return the R2,301 to R. The deed was returned to Z, but the money was not returned to R. In 1875 Z applied under Regulation XVII of 1806, to foreclose the mortgage. In 1880 the mortgage having been foreclosed, S as Z's representative, sued for proprietary possession of the mortgaged property. The lower Courts held that all the acts of R and Z subsequent to the disposal of R's suit of 1869 were fraudulent and collusive, and done with a view to evade the stamp law, and the person actually interested in the deed of mortgage was R and not S, and on this ground, as well as on other grounds, dismissed S's suit. *PER STRAIGHT J.*—That the transfer by endorsement of the deed of mortgage, notwithstanding such transfer was not stamped, transferred to R the mortgagee's interest in the deed; that such interest could not be re-transferred to Z except by a formal instrument stamped according to law, inasmuch as any other mode of re-transfer would leave Z under the same disabilities as regard the stamp law as R, as any suit instituted by Z would, strictly speaking, be based, not on the deed of mortgage, but on the re-transfer; and that therefore under these circumstances, and having regard to the fact that Z had not returned the R2,301 to R,

STAMP ACT (I OF 1879)—continued

pure conjectures. That the unstamped transfer by endorsement was inadmissible to show that Z had transferred his interest in the deed of mortgage to E, whether E or the mortgagor wished to use it in order to show that fact, and consequently Z must be still regarded as the person interested in the deed, and S was therefore entitled to maintain the suit. **SHANKAR LAL & SURESH I L R., 4 All, 462**

3 ——— *Promissory note—Acknowledgment*—The plaintiff sued on two documents, one of which was stamped and the other was not. Held that the documents were not mere acknowledgments, but promissory notes, and being payable otherwise than on demand, were not sufficiently stamped, and consequently not admissible in evidence under s 34, Act I of 1879. **MANICK CHUND v. JOMONA DAS I L R., 8 Calc., 645**

S. C. MANICK CHUND & JOMONA DAS
[7 C. L. R., 88]

4 ——— *Admissibility in evidence—Evidence as to time when stamped*—When a document, which under the stamp laws requires to be stamped, is tendered in evidence, the only question for the Court is whether it bears a proper stamp at the time when it is tendered. The Court is not bound, nor is it at liberty, to allow the parties to go into evidence to show at what time the document was stamped. **KALI CHUND DAS & NOBO KRISTO PAL [9 C. L. R., 272]**

NOOR BIBE & RUMZAN . . . 24 W. R., 198
DEATHAM MADAN GOPAL & RAMNARAYAN GOPAL
[12 Bom., 208]

5. ——— *Suit on an unstamped promissory note—Evidence Act (I of 1872), ss. 65, 67 (b), and 91*—The plaintiff sued to recover from the defendant the amount of a promissory note, which was not stamped. Held that the note was not admissible in evidence, and that the plaintiff was not entitled to recover. **FATECHAND HARCHAND & KISAN I L R., 18 Bom., 614**

STAMP ACT (I OF 1879)—continued.

that the note was a bond, and could be admitted on that ground. **THE PEOPLE v. THE PEOPLE**

note, as he did not seek to prove the consideration otherwise than by the note which was inadmissible in evidence. **THE PEOPLE v. THE PEOPLE**

[I L R., 12 Bom. 443]

6 ——— *Suit on unstamped hundi—Admission of liability by defendant*—In a suit brought upon two hundis, which were inadmissible in evidence for want of impressed stamps, the Judge allowed the claim, holding that the defendants' admission in their written statement rendered it unnecessary to put the hundis in evidence. Held, reversing the decree, that a hundi is "acted upon" within the meaning of s 34 of the Stamp Act where a decree is passed on it, whether proved or admitted, and that the Court cannot give effect to it in either case. **CHENBASAPA & LAKSHMAN RAOCHANDRA [I L R., 18 Bom., 369]**

7 ——— *Unstamped balance of account—Stamp Act (I of 1872), s. 34*—A document, which is stamped, and which is admitted in evidence, is not admissible in evidence as an acknowledgment of a particular sum being due, still it may be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of goods sold. **FATECHAND HARCHAND & KISAN I L R., 18 Bom., 614**

Contra, **MULJI LALA & LINGU MAKJI [I L R., 21 Bom., 201]**

8 ——— and ss. 17 and 33—Act XXXVI of 1860, s 13—Act X of 1862, s 15—Unstamped document executed in 1852 out of British India—Penalty—A document comprising an assignment of the executor's interest under a will, and also a power-of-attorney, was executed in

STAMP ACT (I OF 1879)—continued.

29th May 1862 in Australia and was received in Madras on 22nd June 1862 when the Stamp Act (X of 1862) was in force, which contained no provision for stamping such a document executed out of British India. It was sought in 1899 to use the document in Madras, but it was not stamped. *Held* that no penalty could be laid upon it under the Stamp Act of 1879. *REVENUE DEPT. STAMP ACT, s. 34.*

[I. L. R., 14 Mad., 266]

9. — — — — — and ss. 35 and 39.—*Admission of unstamped document in evidence on payment of penalty.—Necessity for production of original of receipt.*—Where a Court has occasion to admit a previously unstamped document in evidence upon payment of a penalty under s. 34 and the following sections of Act I of 1879, it is necessary that the original instrument should be before the Court. *KARUR C. HALL.* I. L. R., 18 All., 205

10. — — — — — *Penalty chargeable only on the instrument, not on the insufficiently stamped instrument.*—*Instrument tendered as secondary evidence inadmissible.*—*The section does not apply.*

By the terms of the Indian Stamp Act, 1879, the provisions of s. 34, which apply to documents either unstamped or insufficiently stamped, have no application when the original instrument, which ought to have been properly stamped, but was not, has not been produced. The clause of that section dealing with, and exclusively refer to, the admission in evidence of original documents which have been either not stamped at all or have been merely insufficiently stamped. *RASA OF HOUTHI VENKATA SWETA C. ISROGANI CHINA.*

[I. L. R., 23 Mad., 40]

L. R., 26 I. A., 262

VENKATASWETA CHALAPATI C. INJANATH BHAVANAYANATH GARRU 4 C. W. N., 117

11. — — — — — *Notice of allotment of shares not stamped.—Evidence of notice of allotment.*—A notice of allotment of shares in a Company, though not stamped, is admissible in evidence to establish the fact that notice of allotment had been given. *In re Whitley State's Case*, 49 L. J. Ch., 176, and *Naraja Nairin Mukhopadhyaya v. Pratap Narain Mukhopadhyaya*, I. L. R., 26 Cal., 955, p. 959, followed. *Per* STANLEY, J., in Original Court and *MACLEAN, C.J.*, and *MACPHERSON and HILL, JJ.*, on appeal. *MOHEN LALL C. SHI GENGASHI COTTON MILLS CO.* 4 C. W. N., 360

12. — — — — — *Admission of document in evidence.—Unstamped promissory note admitted as a bond on a payment of stamp duty and penalty.—Subsequent rejection too late.*—The plaintiff sued to recover the amount due on three khatas. The defendant objected that the khatas were not duly stamped. The Subordinate Judge held that the instruments were bonds, and as such admitted them in evidence on payment of the proper stamp duty and penalty under s. 34, proviso I, of the Stamp Act (I of 1879). At a subsequent stage of the same suit his successor in office was of opinion that the khatas in question were promissory notes; that as such they could be stamped only at the date of their execution, and that they had been illegally admitted

STAMP ACT (I OF 1879)—continued.

in evidence under s. 34, proviso I. He accordingly dismissed the suit. On appeal, the District Judge agreed with the Subordinate Judge that the instruments said on were promissory notes, but held that, after they had once been admitted in evidence on payment of the stamp duty and penalty, the question of their admissibility could not be subsequently raised in the suit under proviso III to s. 31 of the Stamp Act. He therefore reversed the decree of the Subordinate Judge, and remanded the case for trial on the merits. Against this order of remand, defendants appealed to the High Court. *Held* that the promissory notes, having been once admitted in evidence, could not afterwards be rejected on the ground of their not being duly stamped. *DEVACHAND C. HIRACHAND KAMARAJI.*

[I. L. R., 13 Bom., 449]

13.

— — — — — *Inadmissibility of stamped document stamped after execution.—Document not duly stamped.*—A receipt (dated 1837) stamped subsequently to execution, but before production in Court, was tendered in evidence. *Held* that the document was inadmissible. S. 31 of Act I of 1879 requires instruments chargeable with duty to be "duly stamped," which in this case meant "stamped before or at the time of execution," as laid down by s. 16 of the Act. *JETHIBAI C. RAMCHANDRANAROTAM.* I. L. R., 13 Bom., 484

14.

— — — — — *Instrument admitted as duly stamped.—Appellate Court's power to question the admission.*—*Bom. Reg. XVIII of 1827, s. 10.*—Where a Court of first instance has admitted a document in evidence as duly stamped, s. 31, cl. 3, of the Stamp Act (I of 1879) precludes the Appellate Court from questioning the admission of such document. If the Appellate Court considers the document to be insufficiently stamped, it can only proceed under s. 50 of the Act. S. 31 of Act I of 1879 applies to instruments whenever executed, and must therefore be held to override the special provision of s. 70 of Bombay Regulation XVIII of 1827, according to which no instrument requiring a stamp thereunder was valid unless duly stamped. *GURUPADAPA BIN IRAPA C. NARO VITHAL KULKARNI.* I. L. R., 13 Bom., 493

15.

— — — — — *Document proposing to borrow on certain conditions.—Promissory note.—Proposal.—Contract Act (IX of 1872), s. 4.*—A letter containing a request to borrow a certain sum of money promising that the same should be repaid with interest on a certain day is not liable to stamp duty. It is not a promissory note, but a mere proposal under s. 4 of the Contract Act (IX of 1872). *DHONDHAT NARIHARDHAT C. ATMAJAM MORESHIVAR.* [I. L. R., 13 Bom., 669]

16.

— — — — — *"Chargeable with duty"*—*Promissory note executed out of British India.—Insufficient stamp.—Stamp Act, ss. 5 and 18.*—A suit upon a promissory note which had been executed out of British India was dismissed on the ground that the note was insufficiently stamped, and that it could not be admitted in evidence, on payment of the duty chargeable, under s. 34 of the Indian

STAMP ACT (I OF 1879)—continued.

Stamp Act. On a petition being preferred for the revision of the order of dismissal, — *Held* that s 34 of the Stamp Act did not render the document inadmissible in evidence, that section being appli-

sequence, the obligation to stamp has not arisen
MAHOMED ROWTHAN v MAHOMED HUSIN ROWTHAN
 [I. L. R., 22 Mad., 337]

1 ——— s 37 and s 40—*Arbitration—Award—Evading payment of stamp duty*—Six persons acted as arbitrators in a dispute between two of their fellow villagers, and delivered their award in writing. Subsequently the award was filed in evidence by one of the disputants in the civil suit in the Court of the Munsif of Cuttack, who, on the ground that the document bore no stamp, impounded it and forwarded it to the Collector who ordered the writer to be prosecuted. The Deputy Magistrate, to whom the case was referred, summoned the vis

to form an opinion as to whether the offence was committed with the intention of evading payment of the proper duty **EMPRESS v SODDANUND MAHANTY**

[I. L. R., 8 Cal., 859; 10 C. L. R., 365]

2 ——— *Duty and penalty on document insufficiently stamped, Determination of*—Under the provisions of the Stamp Act, 1879, the

8, ——— and ss 33, 34, 35, 45, and 50—*Collector's decision that an instrument is chargeable with duty—Duty of Civil Court—Practice—Procedure*—The decision of the Collector

before which the document may come has the duty cast upon it under s 33 of examining it and of determining for itself whether it is duly stamped or not, and, if not, of taking the steps laid down in ss 33, 34, and 35, that decision being subject to revision under s 50 **HARIDAI v KRISHNARAY GOPAL**

[I. L. R., 22 Bom., 632]

1. ——— s 39—*Deed of release—Endorsement on conveyance—Payment of deficient duty*—

STAMP ACT (I OF 1879)—continued

A deed of release was endorsed on a deed of conveyance for Rs 100. The conveyance bore an impressed stamp for one rupee, but the endorsement was unstamped. *Held* that the conveyance was valid, and that the release could be validated on payment of the deficient stamp duty and the penalty under s 39 of the Stamp Act. **REFERENCE UNDER STAMP ACT, s 48** . . . I. L. R., 11 Mad., 40

2 ——— *Lost document which is unstamped—Payment of penalty—Secondary evidence of lost document*—In the case of a lost document no penalty can be levied and secondary evidence admitted, for s 39 of the Stamp Act presupposes that the document on which a penalty can be paid is forthcoming. **Kopasan v Shama**, 1 L. R., 7 Mad., 440, followed. **RANGA RAU v BHAYAT-AMMI** . . . I. L. R., 17 Mad., 478

——— s 41—*Fresh suit—Costs—Civil Procedure Code, 1882, ss. 13, 43*—The plaintiff in a suit upon a certain instrument not duly stamped was compelled to pay the amount of duty and penalty. The defendant was the person bound to bear the expense of providing the proper stamp for such instrument. The plaintiff, with reference to s 41 of the Stamp Act, 1879, sued the defendant to recover such amount. *Held* that such amount could not be regarded as part of the costs in the suit in which it was paid, and a separate suit to recover it was maintainable. **ISHAR DAS v MANUD KHAN**
 [I. L. R., 8 All., 70]

——— s 49—*Power of reference to High Court*—A bail-bond was executed to a District Munsif, who expressed no doubt as to the amount of duty to be paid. The case came before the High Court. *Held* that the case was not maintainable. **ENCUT**

1 ——— s 50—*Power of Appellate Court as to insufficiently-stamped documents admitted in lower Court*—Where a document has been admitted

2 ——— and s 3, cl. 1—*Unstamped document admitted by original Court on payment of duty and penalty—Power of Appellate Court to review such admission*—Where the Court of first instance has, on payment of the prescribed duty and penalty, admitted an unstamped document as evidence, under s 3, proviso 1, of Act I of 1879, a superior Court sitting in appeal has no jurisdiction to review the lower Court's proceedings, in so far as they concern such admission, except in the case provided for by s 50 of that Act. **PUNCHANUND DASS CHOWDREY v. TARANOMI CHOWDREY**

[I. L. R., 13 Cal., 64]

3. ——— *Collector, Power of—Reference to High Court—Decision of Provincial Small Cause Court admitting insufficiently stamped document as evidence—Semble*—A Collector is entitled

STAMP ACT (I OF 1879) - continued.

under s. 50 of the Stamp Act to refer to the High Court the decision of a Provincial Small Cause Court admitting in evidence an insufficiently stamped instrument on payment of duty and a penalty. REFERENCE UNDER STAMP ACT, s. 50

[I. L. R., 15 Mad., 259]

1. ——— s. 51—*Application for allowance for spoiled stamps—Power of Collector as to inquiry—Transfer of duty to Deputy Collector—Charge of false evidence—Penal Code, ss. 181, 193.*—S. 51, Ch. VI of Act I of 1879, enacts that, "subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, etc." According to a rule made with reference to that section, "the Collector may require every person claiming a refund under Ch. VI of the said Act, or his duly authorized agent, to make an oral deposition on oath, etc." Held, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. Held therefore, where a person had applied for a refund under Ch. VI of Act I of 1879, and the Collector made over the application for enquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable. *EXPRESS v. NIAZ ALI* . . . I. L. R., 5 All., 17

2. ——— *Mortgage-deed stamped, but not sued.*—A mortgage-deed, which provided for the transfer of possession of the mortgaged premises, was executed to secure the repayment of money to be advanced for the discharge of certain debts owing by the executants. The instrument was stamped, but not registered; and on its appearing that the amount of the debts in question exceeded the sum named, the intended mortgagee refused to carry out the transaction, and the executants executed a deed of conditional sale of the same premises in favour of another. Held that the stamp duty paid on the mortgage could be refunded under Stamp Act (I of 1879), s. 5 (d) (6). REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 16 Mad., 459]

3. ——— *Allowance for spoiled stamps—Mistake made when using stamped paper.*—S. 51 (a) of the Stamp Act, which permits an allowance being made for spoiled stamps, applies only to cases of accidental spoiling of the paper of which the stamp is made, and does not cover cases of the use of the paper in an ordinary way, in which a mistake has been made. *NARASIMHA CHARYULU v. APPA RAO*

[I. L. R., 18 Mad., 122]

4. ——— *Spoiled stamp—Accidental injury to stamp.*—The purchaser at a Court-sale presented a stamped paper for the engrossment of the sale-certificate. The stamp was inadvertently punched

STAMP ACT (I OF 1879)—continued.

by some officer of the Court, but the paper was used as intended and delivered to the purchaser. Subsequently a Deputy Collector, treating the certificate as unstamped, levied the stamp duty together with a penalty. Held that the document was duly stamped, and that the amount levied should be refunded. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 18 Mad., 235]

5. ——— and ss. 3, 31—*Allowance for spoiled stamps.*—Allowance for spoiled stamps may be made under s. 51 of the Stamp Act when a stamped instrument has been endorsed by the Collector under s. 31. REFERENCE UNDER STAMP ACT, s. 46 . . . I. L. R., 11 Mad., 37

s. 61.

See ABETMENT . . . I. L. R., 8 All., 18

1. ——— and ss. 3 (10) and 57—*Rules of Governor-General, 3rd March 1882, 5 (e) — Construction — Stamped paper — Writing on reverse side, Effect of.*—In exercise of the powers conferred by ss. 9, 15, 17, 32, 51, and 56 of the Stamp Act, 1879, the Governor-General in Council made, and published by a notification, dated the 3rd March 1882, certain rules, and, *inter alia*, rule 5 (e), which was as follows: "When a single sheet used under this rule is found insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument, provided that in every such case the side of the sheet which bears the stamp must be covered by a substantial part of the instrument before any part of the latter can be written on the plain paper joined to such sheet. Provided, further, that the part of the instrument written on the plain paper must be attested by the signatures or marks of all the persons executing the document and the witnesses to the same." Held that this rule was an enabling rule, and did not make it obligatory on parties not to write on the reverse side of an impressed stamp paper, so as to make it an offence under s. 61 if they did so write. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 176]

2. ——— *Promissory note—Insufficient stamp—"Accepting."*—The term "accepting" used in s. 61 of the Stamp Act, 1879, does not mean "receiving," but "executing as acceptor." To receive a promissory note not duly stamped and put it in suit does not constitute an offence under s. 61 of the Stamp Act, 1879. *QUEEN v. GULAM HUSSAIN*

[I. L. R., 7 Mad., 71]

3. ——— and s. 64—*Receipt—Acknowledgment by letter.*—Where the receipt of money exceeding Rs 20, in satisfaction of a debt, is acknowledged by letter without a receipt stamp being affixed, the writer is liable to punishment under s. 64 of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 . . . I. L. R., 8 Mad., 11

4. ——— *Person receiving an under-stamped promissory note—Person executing note.*—Under s. 61 of Act I of 1879, the "person accepting" a promissory note not duly stamped is the

STAMP ACT (I OF 1879)—continued.

person who executes such note as acceptor, not a person who merely receives the note. The mere receiver of an unstamped or insufficiently stamped promissory note is not as such liable to any penalty under this section either as principal or abettor. *Queen v Gulam Husain*, 1 L R 7 Mad, 71, *Queen v Nadi Chani Poddar*, 21 W R, Cr, 1, *Empress v Janki*, 1 L R, 7 Bom, 82, and *Empress v Gopal Das*, *Weekly Notes*, All, 1893 p 145 referred to. *QUEEN EMPRESS v Nihal Chand* [1 L R, 20 All, 440]

5. ————— Memorandum of payment

He was charged and convicted under s 61 of the Indian Stamp Act (I of 1879) for not affixing a

and not a mere statement that money was received. *IN RE JAMNADAS HARINARAN*

[1 L R, 23 Bom, 54]

and ss 37 and 40—Offence against stamp law—Sanction to prosecute—Intention to defraud—A Collector is not bound to

such offence. *QUEEN EMPRESS v PALANI*

[1 L R, 7 Mad., 537]

7 ————— and ss 37, 40, and 69—Offence under Stamp Act—Execution of unstamped document—Sanction by Collector to prosecute—Procedure—Abetment—A executed to B on plain

B to pay the duty and penalty, and, on B's refusal to pay, impounded the instrument and sent it to the Collector. The Collector concurring with the opinion of the Civil Court, sanctioned the prosecution in the Criminal Court of both A and B, but without requiring the payment of the duty and penalty. The prosecution resulted in the conviction of A under s 61 of the Stamp Act (I of 1879) and of B of abetment of A's offence. Held that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty. Held further that mere receipt of an unstamped instrument did not constitute the offence of abetment of the execution of such an instrument. *EMPRESS v JANKI* [1 L R, 7 Bom, 82]

8 ————— Offence under Stamp Act—Omission of treasury officer to give certificate required by rule 5 (b) of the rules made by the Governor-General in Council under Notification

STAMP ACT (I OF 1879)—continued

1298 of 3rd March 1892—The non compliance by the treasury officer or the stamp vendor with the direction to give the certificate required by rule 5 (b) of the rules dated 3rd March 1892 issued by the Governor-General in Council under ss 9, 15, 17, 32, 51, and 56 of the Stamp Act is not an act for which the person purchasing the stamp from him can be punished by the invalidation of the stamp innocently bought by him or under s 61 of the Stamp Act. *QUEEN EMPRESS v TRILAKYA NATH BARAL* [1 L R, 18 Calc, 33]

9 ————— and ss II, arts 52 and 58—Acknowledgment and receipt of cheque by letter not stamped—Macknowledged receipt of a cheque for Rs100 by letter. The letter was not stamped. Held that M was properly convicted under s 61 of the Stamp Act, 1879. *QUEEN EMPRESS v MUTTURULANDI* [1 L R, 11 Mad, 329]

10 ————— and ss 64 and 58—Signing otherwise than as a witness, etc.—Meaning of—Liability of agent authorized to sign on behalf of principal—Granting of unstamped receipt—Refusal to grant stamped receipt by firm—Liability of members of such firm—Person—Meaning of—Proof of demand of receipt—The expression 'signing otherwise than as a witness etc., as used in s 61 of the Stamp Act, means the writing of a person's name by himself or by his authority, with the intent of authenticating a document as being that of the person whose name is so written. An ordinary agent authorized to sign on behalf of his principal would fall within this description and consequently within the purview of the section. Where, therefore, a person signed a firm name to certain letters under the authority of the firm, the circumstance that the body of the letters were

the members of a trading partnership. So where certain persons, members of a firm carrying on business in Calcutta as general dealers (which firm had acknowledged the receipt of certain sums of money from one L and had refused to grant him a stamped receipt), were charged under s 61 of the Stamp Act with having granted an unstamped receipt, and under s 64 of that Act with having refused to grant a duly stamped receipt it was held that their liability depended on whether they were in contemplation of

established by evidence that a requisition for a receipt had been made under s 58 of that Act. *QUEEN EMPRESS v KUTTER MOHUN CHOWDHRY*

[1 L R, 27 Calc, 324]
4 C W N, 440

s 63 and ss 37 (b), 40, 61—Prosecution for attempt to defraud Government by undervaluing the value of property in a partition deed—

STAMP ACT (I OF 1879)—*continued*.

A District Judge impounded a partition-deed produced before him and forwarded it to the Collector under s. 35 of the Stamp Act, 1879, being of opinion that the executant of the deed had committed an offence under s. 63. The Collector under s. 69 sanctioned the prosecution of the executant, who was convicted by the Magistrate of an offence under s. 63 of the Act. On appeal, the Sessions Court acquitted him on the ground that the Collector had not complied with s. 37 (b) or s. 40 of the Act. *Held* that the acquittal was wrong. *Empress v. Dwarkanath Chowdhry*, I. L. R., 2 Cal., 399; *Empress v. Soddanund Mahanty*, I. L. R., 8 Cal., 259; *Empress v. Janki*, I. L. R., 7 Bom., 82, considered. *QUEEN-EMPRESS v. VENKATRAYADU*

[I. L. R., 12 Mad., 231]

— s. 64 and s. 69—*Refusal to give receipt—Sanction of Collector necessary before prosecution—Jurisdiction, Want of.*—Prosecution for an offence committed in contravention of s. 64 of the Stamp Act (I of 1869) cannot be instituted unless with the previous sanction of the Collector under s. 69 of the same Act. *QUEEN-EMPRESS v. JETHMAL* [I. L. R., 9 Bom., 27]

1. — s. 67—*Document executed with intent to defraud revenue.*—The second clause of s. 67 of the Stamp Act, 1879, is not controlled by the first clause of the section, which refers only to bills of exchange and promissory notes, but applies to all cases in which a document is executed with intent to defraud the Government of stamp duty. *REFERENCE UNDER STAMP ACT, 1879*. I. L. R., 9 Mad., 138

2. — and s. 61—*Defrauding Government of stamp revenue by a contrivance or device not otherwise specially provided for—Receipt of unstamped document—Abetment of an offence under s. 61 of Stamp Act, 1879—Penal Code (Act XLV of 1860), s. 40.*—Two letters were written to petitioner in which the writer recommended him to advance sums of money to the bearers of the letters and bound himself to repay those sums, if lent, in case of default on the part of the borrowers. The loans were made by petitioner, who kept the letters. A prosecution having been subsequently commenced against petitioner under s. 67 of the Stamp Act, 1879, for defrauding Government of stamp revenue by an illegal device, and he having been convicted on the ground that when the loans were granted the documents became letters of guarantee and as such liable to stamp duty, — *Held* that the execution of a document which on its face required to be, and was not, stamped, could not be said to be “an act, contrivance, or device not specially provided for by this Act or any other law for the time being in force”; and that punishment for the act of the executant of such a document, if it were punishable at all, was provided for under s. 61 of the Stamp Act, 1879, and it could not therefore be dealt with under s. 67. Also that the act of a person receiving an unstamped document might amount to abetment of an offence, having regard to s. 61 of the Stamp Act, 1879, and to the definition of an “offence” in s. 40 of the Penal Code, and, if so, would be an act provided for by “any

STAMP ACT (I OF 1879)—*continued*.

other law for the time being in force,” and so not within the terms of s. 67 of the Stamp Act, 1879. *QUEEN-EMPRESS v. SOMASUNDARAM CHETTI*

[I. L. R., 23 Mad., 155]

— s. 68—*Court-fee stamps—Sale by unlicensed person—Stamp Act (XVIII of 1869), s. 48—Act VII of 1870 (Court Fees Act), s. 34.*—The sale of Court-fee stamps without a license was not an offence under the Stamp Act (XVIII of 1869), but is now specially made so by s. 68 of Act I of 1879. *EMPRESS OF INDIA v. JALLU*. I. L. R., 4 All., 216

— s. 69.

See *COLLECTOR*. I. L. R., 2 All., 806See *COURT FEES ACT, 1870, SCH. I, ART. 8.*

[I. L. R., 11 Bom., 526]

See *EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.*

[I. L. R., 18 Bom., 614]

I. L. R., 21 Bom., 201

See *LIMITATION ACT, s. 19—ACKNOWLEDGMENT OF DEBTS.*

[I. L. R., 18 Bom., 614]

I. L. R., 21 Bom., 201

— sch. I, art. 1.

See *CASES UNDER STAMP ACT, 1869, SCH. II, ART. 6.*

1. — *Acknowledgment—Hath-chitta.*—Whether an account signed by a debtor in the books of his creditor amounts to an acknowledgment within the meaning of the Stamp Act (I of 1879), sch. I, art. 1, is a question depending in each case upon the form and intention of the entry. *BINJA RAM v. RAJMOHUN ROY*. I. L. R., 8 Cal., 282

2. — *Stamp duty—Hath-chitta—Evidence—Acknowledgment.*—An account in a hath-chitta, showing advances of money made to, and part-payment made by, the defendant, the whole amount being in the handwriting and signed by the defendant, is admissible in evidence without being stamped. *Brojender Coomary v. Bromomoye Chowdhry*, I. L. R., 4 Cal., 885, followed. *BRJO GOBIND SHAHA v. GOLUCK CHUNDER SHAHA* [I. L. R., 9 Cal., 127]

3. — *Acknowledgment—Promise in writing—Contract—Contract Act (IX of 1872), s. 25, cl. 3, and s. 62, ill. (a).*—A khata, or account stated, bearing a stamp of one anna, but containing no promise in writing, *held* to be a mere acknowledgment sufficiently stamped, and not a contract within the meaning of s. 25, cl. 3, of Act IX of 1872. *CHOWKSI HIMUTTAL v. CHOWKSI ACHUTTAL* [I. L. R., 8 Bom., 194]

4. — *Acknowledgment—Balance-sheet—Nikash.*—A nikash or balance-sheet made out and signed by a gomashtha of a business showing a balance due by him to the owner of the business is not an acknowledgment of a debt within the meaning of art. 1, sch. I of the Stamp Act, and is admissible in evidence without being stamped. *Brojo*

STAMP ACT (I OF 1879)—continued

Gobind Shaha v. Goluck Chunder Shaha, 1 L R, 9 Calc., 127, followed. *NUND KUMAR SHAHA v. SHURNOMOYE DAS*, 1 L R, 15 Calc., 132

Hence, where such a letter written *ante litem motam* before limitation in respect of the debt had expired, and at a time when other evidence of the debt was wanting, was tendered in evidence as an acknowledgment of the debt for the purpose of saving limitation under the provisions of s 19 of the Limitation Act, 1877,—*Held* that the said letter was not inadmissible in evidence by reason of its not having been stamped. *BISHAMBAR NATH v. NAND KISHORE*

[1 L R, 15 All, 56]

§ ——— and art. 5—*Acknowledgment—Admissibility in evidence*—The defendant, in two letters to the plaintiff in respect of certain contracts to sell Government securities, acknowledged his inability to give delivery, and after calculating the amount of the differences between

S C MANICK CHUND v. JOMMOON DAS

[1 L R, 8 Calc., 845]

1 ——— sch. I, art. 4—*Agreement to lease—Correspondence containing agreement to lease—Complete agreement*—Certain correspondence passed between the plaintiff and defendant relating to the lease of a flat in premises in occupation of the plaintiff, which admittedly contained an agreement

“You may have the option of retaining it (the flat) for another year on the same terms, but not for a shorter period.” In pursuance of an arrangement,

STAMP ACT (I OF 1879)—continued

entered into possession and disputes having arisen, the plaintiff gave him notice to quit, and sued to eject him, alleging that at the most he was a mere monthly tenant. The defendant pleaded that under the lease he was entitled to hold for a year. The year expired before the suit came on to be heard, and the defendant, not having exercised the option to renew, vacated the premises. At the hearing the defendant, in

defendant it was argued that the stamped unexecuted lease must be treated as part of the correspondence and as it was properly stamped, no further stamp was necessary. *Held* that, as the correspondence contained a complete agreement independently of the draft and engrossed lease, the latter could not be treated as part of the correspondence, and that consequently the correspondence must be stamped and the penalty paid before it could be admitted in evidence. *BOYD v. KREIG* 1 L R, 17 Calc., 548

2 ——— ‘*Agreement to lease*’

—An agreement by a zamindar to execute a formal deed of lease of his zamindari, which is under attachment after obtaining a certificate from the Court under s 305 of the Civil Procedure Code is an ‘agreement to lease’ under art. 4, sch. I of the Stamp Act. *REFERENCE UNDER STAMP ACT*, s 46

[1 L R, 17 Mad., 280]

1 ——— sch. I, art. 5—*Agreement or memorandum of agreement relating to the sale of shares—Agreement by correspondence*—Correspondence having passed between the plaintiff and defendant relating to the sale of shares in a certain company by the plaintiff to the defendant, and the sale not having been carried out, the plaintiff in a suit for damages against the defendant sought to prove an agreement for sale from the letters, none of which were stamped. *Held* that the letters, though unstamped, were admissible as evidence of an agreement, since they did not constitute an agreement or a memorandum of agreement. *RAINIER v. GOULD* 1 L R, 13 Mad., 255

2. ——— *Agreement—Document acknowledging receipt of money for future sale of shares of a company and promising to execute a pukka document of sale*—A document whereby the party executing it purported to sell his right, title, and interest in certain receipts for shares and to execute in future a pukka document of sale thereof, and acknowledged the receipt of Rs 1000, *held* to be an agreement, and, as such, liable to stamp duty of eight annas under sch. I, art. 5, of the Stamp Act (I of 1873), the property in the receipt not being intended to pass forthwith. *HEPTULA SHEIKH ADAM & Co v. ESAPALI ABDULLAH* 1 L R, 14 Bom., 316

3. ——— *Letters submitting to*

—*Stamp Act*—*Stamp Act*

the option of renewal was given in the unexecuted lease in the following terms “Also with option to renew for another twelve months certain” The defendant having

the Stamp Act.

STAMP ACT (I OF 1879)—*continued.*

GANGARAM KUSHABA RANGOLE v. NARAYAN BABJI RANGOLE . . . I. L. R., 19 Bom., 32

4. ———— and art. 28—*Indemnity note given to railway company by consignee—Agreement*—An indemnity note, passed to a railway company by a consignee and his surety in respect of goods delivered to the consignee, and for which he is unable to produce the railway receipt—by which note they undertake to hold the railway company, its agents, and servants, harmless and indemnified in respect of all claims to the said goods—is not an “indemnity bond” falling under art. 28, sch. I of the Stamp Act (I of 1879), but is an agreement falling under cl. (c), art. 5, sch. I of that Act, and consequently chargeable only with a stamp duty of 8 annas. ANONYMOUS

[I. L. R., 5 Bom., 478]

5. ———— *Document—Agreement to pay.*—A document was executed in these terms: “This document, a hand-note, is executed by me for the purpose of purchasing a ghori. I take from you Rs. 7. I will pay interest on the sum at a half-anna per rupee per mensem. Having received the Rs. 7 in cash, this hand-note is executed.” Held that the document was not a promissory note, nor a bond, but was an agreement to pay, and as such was chargeable with duty under cl. 5, sch. I of the Stamp Act. *Ferrier v. Ram Kulpa Ghose*, 23 W. R., 403, referred to. MURARI MOHEN ROY v. KHETTER NATH MULLICK . . . I. L. R., 15 Cal., 150

6. ———— and art. 44 (a)—*Agreement—Mortgage.*—In a contract for work to be performed entered into by a contractor with the Executive Engineer of a district, it was stipulated that payments should be made from time to time to the contractor as the work progressed, and that the Engineer might retain 10 per cent. on the value of the work done to cover compensation for default on the part of the contractor and as security for the proper performance of the contract. Held that this contract was chargeable with stamp duty as an agreement under art. 5 (c) and not as a mortgage under art. 44 (a) of sch. I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 209]

7. ———— and art. 44—*Mortgage*—“*Agreement not otherwise provided for.*” A license issued to an arrack renter expressly required as one of its conditions that the licensee should deposit a sum equal to three months’ rental as a security for the due performance of the contract. The licensee executed a muchalka, stating that he agreed to all the terms and conditions mentioned in the license. Held that the muchalka ought to be stamped with an eight-anna stamp. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 134]

8. ———— and sch. II, cl. 2 (a)—*Agreement to rent pasture ground—General Clauses Act (I of 1868), s. 2—Growing grass—Lease—Immoveable property.*—By a rent-note, dated the 28th July 1885, the executant B agreed to take for five months from the executee H

STAMP ACT (I OF 1879)—*continued.*

a certain pasture ground attached to the military cantonment at Poona. The note recited that B was to graze thirteen she-buffaloes, at Rs. 1-10 per head, on the pasture ground, for a consideration of Rs. 21-2-0 to be paid to B by two instalments; in default of payment of one instalment, the whole amount was to become payable at once. It further recited that, in case the debt remained unpaid beyond the fixed period, B was to pay on the amount interest at the rate of 2 per cent. per month. The Collector of Poona was of opinion that the rent-note in question was a lease and sufficiently stamped with four annas. The Inspector-General of Registration held the document to be an agreement falling under art. 5, cl. (c), sch. I of the Stamp Act, and chargeable with a stamp duty of eight annas. On reference by the Commissioner to the High Court,—Held per BIRDWOOD and PARSONS, JJ. (NANABHAI HARIDAS, J., dissenting), that the rent-note in question was an agreement, and as such chargeable with a stamp duty of eight annas under cl. (c) of art. 5, sch. I of the Stamp Act (I of 1879). Held per NANABHAI HARIDAS, J., that the instrument was a lease and sufficiently stamped with four annas, growing grass being immoveable property within the definition of s. 2 of the General Clauses Act (I of 1868). Should, however, growing grass be not regarded as immoveable property, the instrument was an agreement for, or relating to, the sale of goods, the price being fixed with reference to the quantity to be consumed by the cattle, and, as such, was exempt from stamp duty under sch. II, art. (a), of the Stamp Act. IN RE HORMASJI IRANI . . . I. L. R., 13 Bom., 87

9. ———— and sch. II, art. 2—*Interest in land—Agreement to sell standing trees.*—A document bearing a stamp of one rupee stated (*inter alia*), “I have sold to you the standing trees of the two villages for Rs. 1,601 on condition that those young trees whose trunks do not exceed 2 feet in circumference should not be cut by you, and that I will give you written information to cut the trees of the said villages when you shall have to cut the trees and remove them within two years, etc.” Held that the document was sufficiently stamped. VOHRA MAHAMADALI v. RANCHANDRA

[I. L. R., 22 Bom., 785]

——— sch. I, art. 8—*Articles of Association—Special resolution—Resolution superseding Articles of Association—Companies Act (VI of 1882), ss. 76, 79.*—A company limited by shares and already possessing Articles of Association proceeded to pass a special resolution in virtue of which a document was drawn up entitled “Articles of Association” in supersession of the Articles theretofore in force. The record of this special resolution was under the provisions of s. 79 of the Indian Companies Act, 1882, sent to the Registrar of Joint Stock Companies to be recorded by him. The document was impounded by the Registrar on the ground that it required to be stamped as Articles of Association, and was not so stamped. Hereafter a reference was made by the Board of Revenue to the High Court under the provisions of s. 46 of the Indian Stamp Act, 1879, as to whether the document in

STAMP ACT (I OF 1879)—continued

question required to be stamped. *Held* that the Indian Companies Act did not contemplate any such thing as new Articles of Association, and that the document in question was nothing more than the record of a special resolution, and as such did not require to be stamped. **IN THE MATTER OF THE NEW EGERTON WOOLLEN MILLS**

[I. L. R., 22 All., 131]

MITTER, J. L. R., 22 All., 131
S C RADHAKANT SHUKLA v ARHOY CHURN MITTER
II C. L. R., 310

and art 19—Cheque—

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Gatty v.

Ira Kant

I. L. R., 103,

stamp of

and the

evidence

showed it

to have been

actually drawn

on the 8th

September,

and therefore

to have been

post dated,

it was contended

that the cheque

was really a

bill of exchange

payable 17

days after

date, and

therefore inadmissible

in evidence as

being

insufficiently

stamped. *Held* in a

suit to recover

the amount of the

cheque on its

being dishonoured,

that it was admissible

in evidence. **RAMES CHETTY****v MAHOMED GHOUSE.** I. L. R., 16 Calc., 432

sch. I, art. 13—Security bond for

costs of appeal—Court Fees Act (VII of 1870),

sch. II, Art. 6—*Held* by the Full Bench that where

a bond is given under the orders of a Court as

security by one party for the costs of another, it is

subject to two duties—(a) an *ad valorem* stamp

under the Stamp Act, art. 13 sch. I, (b) a Court-

fee of eight annas under the Court Fees Act, art. 6,

sch. II. **KULWANTA v MAHABIR PRASAD**

[I. L. R., 10 All., 18]

1 ——— sch. I, art. 18—Certificate of sale — The stamp duty payable on a certificate of sale is governed not by s. 24, but by sch. I, art. 16, of the Stamp Act, 1879. **REFERENCE FROM DISTRICT JUDGE UNDER s. 49 OF STAMP ACT**

[I. L. R., 11 Mad., 18]

2 ——— Certificate of sale—Purchase of equity of redemption—Duty—Where the equity of redemption of an estate is sold in execution of a decree, the stamp duty leviable upon the certificate of sale must be calculated upon the amount of the purchase-money only. **REFERENCE UNDER STAMP ACT, 1879**

I. L. R., 7 Mad., 421

STAMP ACT (I OF 1879)—continued

3. ——— Certificate of sale—Practice—*Ad valorem* stamp duty—Sale, subject to mortgage lien, of property in several lots—Stamp duty payable by purchaser of one lot, how calculated—In execution of a decree, certain immovable property was attached and sold in eight lots to different persons, subject to a mortgage. The applicant was one of the purchasers, and applied for a sale certificate. A question arose whether, in computing stamp duty, the whole amount of the principal mortgage debt, or only a proportionate amount of it, was to be deemed a part of the consideration. On reference to the High Court, *Held* that the whole amount of the principal mortgage-debt, or was to form stamp

obtaining a separate sale certificate. **IN RE THE APPLICATION OF VISHNU KESHAV SATHI**

[I. L. R., 10 Bom., 58]

4. ——— Sale certificate Sale subject to incumbrance—Where property subject to an incumbrance is sold by auction in execution of a decree, the sale certificate should be stamped according to the amount of the purchase money, and not according to the amount of the purchase-money together with the incumbrance. **JWALA PRASAD v RAM NARAIN** I. L. R., 15 All., 107

5 ——— Sale of property subject to mortgage—Valuation of property sold—Certificate of

Civil Procedure Code, and the sale has been held subject to them. Claims admitted by parties or established by the decree of a Court should be entered in the proclamation of sale as charges upon the pro-

BARAYA v SUBRAO RAMCHANDRA v ELLAPUR

[I. L. R., 18 Bom., 175]

1. ——— sch. I, art. 21—Conveyance by vendors under one denomination to the same person's purchasers under another denomination—Eight persons, the owners of a tea estate, purported to convey their rights in the estate to a company, the consideration expressed in the deed of conveyance being £43,320, payable in shares and debentures of the company taken at par. The only shareholders

STAMP ACT (I OF 1879)—continued.

or debenture-holders of the company were the eight persons who purported to sell the estate to the company. *Held* that, although the conveying parties were the shareholders of the company, there was just as much a sale and transfer of the property and a change of ownership as there would have been if the shareholders had been different persons; and that the proper duty payable on the conveyance was therefore that mentioned in art. 21, sch. I of the Stamp Act. **IN RE KONDOLI TEA COMPANY**

[I. L. R., 13 Calc., 43]

2. — and art. 60, cl. (b)—*Transfer of lease—Transfer of a share of a partnership.*—Where a transaction is in substance a sale of a share in a partnership, and the transfer of a share in a lease only forms part of the subject-matter of the sale, as being a part of the partnership assets, the transaction should be regarded not as the transfer of a lease, but as the sale of a share in a partnership, and the duty payable in respect thereof should be that falling under sch. I, art. 21, of Act I of 1879. **IN RE MENGLAS TEA ESTATE**

[I. L. R., 12 Calc., 383]

3. — *Company—Winding up—Transfer of property by old to new company—Conveyance.*—An instrument, which is in terms a conveyance of property at an agreed value, is a sale of such property at that price, and is governed by art. 21, sch. I of the Stamp Act (I of 1879). The circumstance that the transaction is a part of a larger transaction cannot affect the character of the instrument. **REFERENCE UNDER STAMP ACT, s. 46**

[I. L. R., 20 Bom., 432]

4. — *Conveyance—Transfer of lease.*—When by one and the same deed there is a conveyance of freehold lands and goodwill and a transfer of interest secured by leases, the deed should be stamped under art. 21 of sch. I of the Stamp Act (I of 1879) with an *ad valorem* duty on the conveyance of the freehold property, goodwill, buildings, and erections, and under art. 60 of the schedule with a duty of Rs 5 on the transfer of each of the interests secured by the leases. **REFERENCE UNDER STAMP ACT, 1879, s. 46**

[I. L. R., 23 Calc., 283]

5. — *Conveyance.*—The amount payable on a conveyance under the Stamp Act, sch. I, art. 21, is properly calculated on the consideration set forth therein, and not on the intrinsic value of the property conveyed. **REFERENCE UNDER STAMP ACT, s. 45**

I. L. R., 20 Mad., 27

1. — sch. I, art. 22—*Civil Procedure Code (Act XIV of 1882), s. 62—Copy of a document filed with the plaint—Attestation by the Court or its officer.*—Art. 22 of sch. I of the General Stamp Act (I of 1879) does not apply to a copy contemplated by s. 62 of the Civil Procedure Code (Act XIV of 1882), the attestation of which copy by the Court or its officer being not made on the application of the owner of the copy, but solely in consequence of the express direction of the Code, with a view to its being filed for the purpose of identifying

STAMP ACT (I OF 1879)—continued.

the book entry when produced at the hearing. **KRISHNAJI SADASHIV RANADE v. DULABA**

[I. L. R., 15 Bom., 687]

2. — *Copy of order of Municipal Board certified by the Secretary—Public officer—Evidence Act (I of 1872), ss. 74, 76, and 78.*—*Held* that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a true copy by the Secretary to the Board, came within art. 22 of the first schedule to the Indian Stamp Act, 1879, and required to be stamped. The Secretary of a Municipal Board is a "public officer" within the meaning of art. 22 of the first schedule to the Stamp Act, 1879, for the purposes indicated therein. **REFERENCE UNDER STAMP ACT, s. 46**

[I. L. R., 19 All., 293]

— sch. I, art. 25, and art. 5—*Declaration of trust—Agreement.*—An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement. *Held* that the agreement was liable to stamp duty as a declaration of trust under the Indian Stamp Act, 1879, sch. I, art. 25, and as an agreement under art. 5 (c). **REFERENCE UNDER STAMP ACT, s. 46**

I. L. R., 11 Mad., 216

— sch. I, art. 29—*Instrument evidencing an agreement to secure repayment of loan executed at time of loan—Assignment by way of mortgage of valuable security to secure pre-existing debt.*—Art. 29 of sch. I of the Stamp Act (I of 1879) applies to an instrument evidencing an agreement to secure the repayment of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan. **QUEEN-EMPRESS v. DEBENDRA KRISHNA MITTER**

I. L. R., 27 Calc., 587

[4 C. W. N., 524]

1. — sch. I, art. 36—*Instrument of gift—Endorsement at foot of document.*—On the 1st of April 1878, on which date the Stamp Act (XVIII of 1869) was in force, A passed to B a document on plain paper granting B an annuity charged on the revenues of a village. On the 24th of April 1879, the Stamp Act (I of 1879) being then in force, A adopted C as her son, and C three days afterwards made the following endorsement upon the document: "I consent to act according to this sanad." *Held* that the instrument should be stamped with a single stamp as an instrument of gift, under art. 36, sch. I of Act I of 1879. **IN RE BHAVANIBAI**

I. L. R., 7 Bom., 194

2. — and art. 25—*Declaration of trust—Gift.*—Where a donee was directed in an instrument of gift of certain land to maintain the donor out of the profits of the land,—*Held* that the instrument was liable to stamp duty as a gift, and not as a declaration of trust. **REFERENCE UNDER STAMP ACT, s. 46**

I. L. R., 12 Mad., 89

STAMP ACT (I OF 1879)—continued

sch. I, art 37—*Partition, Instrument of—Arbitration—Award*—An award directing partition of property, if signed by the parties interested by way of assent to the award, becomes thereby an instrument of partition, and should be stamped accordingly. **AMARJI v DAYAL**

[I L R, 9 Bom., 50]

1. —sch. I, art. 38—*Deed acknowledging former adoption and investing the person*

the opinion of the High Court. *Held* that the document was distinct from an adoption deed or authority to adopt so as to be liable to stamp duty under Act I of 1879, art 38, sch I, and that it was not liable to any stamp duty. **IN THE MATTER OF AMBAT**

[I L R., 13 Bom., 280]

2. —*Deed confirming adoption*—A document was written on a ten-rupee stamp paper executed by the executant M to one D, whereby M, after reciting the fact of his having adopted D, constituted him the heir to his interest in the undivided family property, and declared him to be the sole owner thereof as the executant's adopted son. On the same document C, the mother of D, and his father P endorsed separately their consent to the adoption. *Held* that the document was not an instrument conferring an authority to adopt, and therefore not chargeable under art 38 of sch I of Act I of 1879 or under any other article. The endorsements therefore were not chargeable with any stamp duty. **IN THE MATTER OF RAMARAJA**

[I L R., 13 Bom., 281]

1. —sch. I, art 39 (b)—*Lease—Rent*—A mittadar executed a perpetual lease of certain villages for Rs 1954 per annum. Of this, Rs 1554-10-7, representing the Government peashkash, the lessor directed the lessee to pay to Government and the balance Rs 400 to himself. The lease was written on a 20-rupee stamp paper. *Held* that the sum of Rs 1954 represented the rent and that the stamp duty was to be calculated thereupon. **REFERENCE FROM BOARD OF REVENUE**

[I L R., 7 Mad., 155]

2. —sch. I, art. 39 (c), (d)—*Rent—Premium—Mortgage—Lease*—By a document purporting to be a lease certain land was leased for four years at a rent of Rs 15 per annum. Out of the total rent

STAMP ACT (I OF 1879)—continued

of the Stamp Act, 1879. By a document purporting to be a rent agreement, the lessee took a shop for five years, agreeing to pay Rs 30 per annum as rent, depositing one year's rent with the lessor, which was to be credited to the rent of the last year of the term. *Held* that the deposit of one year's rent with the lessor was not a fine or premium within the meaning of art 39 (c) of the Stamp Act, 1879. By a document purporting to be an instrument of mortgage, the owner of certain land, being indebted in a certain sum, conveyed the land to his creditor for nine years in liquidation of the principal and interest of the debt. The creditor was to take the produce of the land, enjoy the profits or suffer the loss, and pay Rs 35 per annum as rent. *Held* further that the document was a lease with a premium liable to duty under art 39 (d) of sch I of the Stamp Act, 1879. **REFERENCE UNDER STAMP ACT, 1879**

[I L R., 7 Mad., 203]

3. —and sch II, art 13, cl. (b)—*Kabuliat or lease of immovable property for any purpose other than that of cultivation—Stamp duty, Exemption from, of such lease*—A kabuliat or lease relating to immovable property let to a tenant for any purpose other than that of cultivation is not such a lease as is contemplated by art 13, cl. (b), of the Stamp Act I of 1879 so as to be exempt from stamp duty, but is chargeable with such duty under sch I, art 39 of that Act. **NABATAN RAMCHANDRA v DHONDU RAGHU**

[I L R., 10 Bom., 173]

1. —sch I, art 44, cls (a) and (b)—*Mortgage deeds—Cotenants for joint enjoyment—Per Curiam*—Cl (a) of art 44 of sch I of the Stamp Act, 1879, applies only to those deeds in which

property is given, or agreed to be given by the terms of the deed to the mortgagees. **PER GIBBS, C.J.**—The principle of the distinction between the two classes of mortgages named in art 44 is that, where the title to the land and the possession or immediate right to possession both pass to the mortgagee, the same duty is charged as upon a conveyance by way of sale, but when the title only passes, and possession, or the right to possession, does not, the lower duty is chargeable. **PER MITTAL, J.**—The word "given" in cl (a) of art 44 points out that only those transactions are intended to be covered where the transfer of possession takes place in consequence of the agreement on the part of the mortgagor to deliver over possession as part of the security for the mortgage money, but where the mortgagee becomes entitled to enter upon possession irrespective of the consent of the mortgagor to make over possession, cl (a) will not apply. **PER FIELD, J.**—The Stamp Act, 1879, does not apply to a mortgage of land where there is no such agreement, express or implied,

STAMP ACT (I OF 1879)—continued.

but the effect of the document is such that a mortgagee has merely a right which he can enforce in a Court of law to obtain possession. ANONYMOUS

[I. L. R., 10 Calc., 274]

2. ———— *Construction.*—A mortgage-deed, dated the 4th August 1883, stipulated that possession was to be given to the mortgagee after the 31st May 1818, if the mortgage loan was not entirely repaid by that date. On the question being referred to the High Court, whether cl. (a) or cl. (b) of art. 44, sch. I, Stamp Act I of 1879, applied to the case,—*Held* that cl. (b) applied. The intention of cl. (a) is to cover cases of mortgage with possession, and the words “agreed to be given” are to be read as if the words “at the time of execution” immediately followed and qualified the word “given.” Cl. (a) should be read as if it were worded “when possession of the property * * * is given by the mortgagor at the time of execution, or is agreed to be then given, and not * * * is then agreed to be given.”

HINGANGHAT MILL COMPANY v. REKCHAND

[I. L. R., 8 Bom., 310]

3. ———— *Stipulations not creating fresh obligations.*—Under the ordinary law of mortgage, the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title. So that where a mortgage-bond contains stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay, the stipulations do not create any fresh obligation, and require no additional stamp duty. DAMODAR GUNGADHUR v. VAMANRAV LAKSHMAN

I. L. R., 9 Bom., 435

4. ———— *Bond—Mortgage—Stamp Act, 1879, s. 3, cl. 4 (c) and 13, ss. 7, 26, sch. I, art. 13.*—A grower of sugarcane executed a deed whereby he borrowed a sum of Rs 25 as “earnest-money,” and covenanted to deliver to the lender on a certain date 21 maunds of rab (unrefined sugar), upon which he was to receive a profit of 9 annas per maund over and above a price to be thereafter fixed at a meeting of growers. He further covenanted as follows: “If the supply of the rab be less than the fixed quantity, and the money still remains due, then the said money thus due, including the profits, shall be paid at the rate of Rs 1 per maund; that in case of my not supplying the rab at all, or selling it at some other place, I will pay the whole amount at once, including the said profits.” As collateral security, he hypothecated the produce of a field of sugarcane, the value of which was not stated. *Held* by the Full Bench that the instrument was a “mortgage-deed” within the meaning of s. 3 (13) and art. 44 (b) of sch. I of the Stamp Act (I of 1879). *Held* by STUART, C.J., STRAIGHT, J., and BRODHURST, J., that it was also a “bond” within the meaning of s. 3 (4) (c) and art. 13 of sch. I, and with reference to the provisions of s. 7 was chargeable with stamp duty solely as a bond under art. 13, the contract being a

STAMP ACT (I OF 1879)—continued.

single one. *Held* by the Full Bench that the proper stamp duty payable on the instrument was four annas. *Held* by STUART, C.J., and STRAIGHT, J., that in estimating the stamp duty payable on the instrument the amount stipulated to be paid by way of penalty in case of breach of the covenant to deliver the rab must not be taken into account. *Reference* by Board of Revenue, N.-W. P., I. L. R., 2 All., 654, doubted; and *Gisborne Subal Bowri*, I. L. R., 8 Calc., 284, referred to by STRAIGHT, J. Per STUART, C.J., that, for the purpose of estimating the stamp duty, the amount secured by the instrument was Rs 25, the amount borrowed, plus Rs 11-3, the amount to be paid to the borrower on the 21 maunds at 9 annas per maund, and that the additional profit, i.e., the price fixed at the meeting of growers, not having been ascertainable at the time of execution, fell within the provisions of s. 26 of the Stamp Act, and could not have the effect of adding to the stamp duty. Per OLDFIELD, J., that the amount secured or limited to be ultimately recoverable under the instrument was Rs 25, the amount borrowed, plus Rs 21, the sum recoverable at Rs 1 per maund in the event of the borrower's non-delivery of the 21 maunds, and stamp duty was payable on this amount. IN THE MATTER OF GAJRAJ SINGH

[I. L. R., 9 All., 585]

See SAMBHU CHANDRA BEPARI v. KRISHNA CHARAN BEPARI . . . I. L. R., 26 Calc., 179

5. ———— *Assignment by way of mortgage of valuable security to secure pre-existing debt—Stamp Act (I of 1879), s. 3, sub-s. (13).*—Art. 29 of sch. I of the Stamp Act (I of 1879) applies to an instrument evidencing an agreement to secure the repayment of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan. Where an instrument was an assignment by way of mortgage of valuable securities to secure a pre-existing debt, it was held to come under art. 41 of sch. I of the Stamp Act. For the purpose of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act. QUEEN-EMPRESS v. DEBENDRA KRISHNA MITTER

[I. L. R., 27 Calc., 587
4 C. W. N., 524]

6. ———— and s. 3 (13), sch. I, art. 29, and art. 5 (c)—*Mortgage—Assignment of growing coffee.*—By an agreement made the first day of September 1884, A, in consideration of Rs 1,000 to be advanced to him by B, assigned to B the whole crop of coffee then growing upon a certain estate, upon trust, *inter alia*, to secure the repayment of the sum advanced. It was stipulated that A should cultivate the crop till maturity and deliver it to B. *Held* that this document was a mortgage liable to duty under art. 44 (b) of sch. I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 8 Mad., 104]

STAMP ACT (I OF 1879)—continued

7 ——— and art 28—*Mortgage advance payable on demand—Power of sale in default of repayment of advance—Pledge—*In consideration of an advance of Rs 1450 on interest, repayable on demand certain boat owners assigned to S & Co their paddy boats the boat owners retaining working and being responsible for the safety of the boats and agreeing so long as the sum advanced with interest should remain unpaid to use their boats for the sole purpose of supplying paddy to S & Co and to deliver such paddy (which was to be paid for at the market rate) at the end of each trip as directed by S & Co. On failure to make repayment on demand S & Co were empowered to take possession and to sell the boats. *Held* that the document was a mortgage, and not a pledge, and as such should be stamped under art 44 (b) of Sch I of the Stamp Act of 1879. *IN THE MATTER OF HO SHWAY AUNG & STRANO STEEL & CO*
[I L R, 21 Calo, 241]

8 ——— *Mortgage—Consideration—*A *kanom* deed is liable to a stamp duty as a mortgage only, and in calculating the consideration

11. 22. 11, 22. 11. 11, 22. 11

9 ——— *'Mortgage deed'*—By

prior charges thereon, should be held by the B company as security for a sum of £32,000 to 10 previously mentioned in the deed. *Held* that the clause constituted the document a 'mortgage deed' within the meaning of the Indian Stamp Act 1879. The whole debt of £32,000 15 10 being by the said document secured not only upon the old security of £20,000 first debentures but also upon the £8,000 second debentures and the remaining £5,000 of the first debenture stamp duty was payable on the new security, though a portion of the debt secured was included in the previous document on which duty had been paid, that the document was not a mere agreement to make a transfer, but an agreement to land over the debentures on the execution of the document, and was therefore in effect an actual transfer, that the 'mortgage deed' was one with possess on within art 44 (a) of sch I of the Stamp

11. 22. 11, 22. 11. 11, 22. 11

1 ——— sch. I, art 40, and s 34 and sch. II, cl. 2—*Agreements for sale of goods—*

STAMP ACT (I OF 1879)—continued

*Broker's bought and sold notes—Note or memorandum of sale—*The plaintiffs sued to recover damages for the non acceptance of wheat which the defendant on the 16th May 1881 by two contracts agreed to purchase. At the hearing in order to prove the terms of the contracts the plaintiffs tendered two notes or memoranda of the contracts which purported to be signed by the broker and also by the defendant. These notes were in fact, the sold notes which the broker had given to the plaintiffs. Each of these notes had been stamped with an anna stamp but the stamp on one of them had not been cancelled at all, and the stamp on the other was without any mark of cancellation except a small part of the first letter of the defendant's signature, consisting of a slightly curved line. On these notes being tendered in evidence it was objected that they were inadmissible, being unstamped having regard to ss 11 and 34 of the Stamp Act. The Court allowed the objection and rejected the notes. The plaintiffs then contended that the documents were only memoranda of parol contracts and might be regarded as agreements for the sale of goods and exempt from stamp duty, under cl 2 sch II or at all events admissible on payment of a penalty—as 7 and 34. *Held* that the documents in question were documents of the nature of a note or memorandum chargeable under art 46 of sch I, and were not exempt from duty under cl 2 of sch II. *RALLI & CARAMALLI FAZAL*

[I L R, 14 Bom, 102]

——— sch. I, art 40, and s 34
*Life policy—*E
TON J—*Held*
of 1829 as do
life policies of insurance issued before 1860 did not require a stamp. *RAJNABAI BOSE & UNIVERSAL LIFE ASSURANCE COMPANY*

[I L R, 7 Calo, 594 10 C L R, 561]

1 ——— sch. I, art 50—*Court Fees Act, sch II, art 10 (a)—Power to raski to obtain copies from Collector's office—Stamp—*A document

stamped as a power of attorney under art 50 (b) of sch I of the Stamp Act 1879. *REFERENCE UNDER STAMP ACT, 1879*
I L R, 8 Mad, 146

2 ——— cl. (b)—*Court Fees Act sch II art 10 (a)—Vakalatnama—Power of attorney—*A document was given to P by thirty six persons jointly interested in a certain sum of money authorizing P to receive pay was a power proper stamp. *Stamp Act 1879* sch I, art 50 (b) *REFERENCE UNDER STAMP ACT 1879*
I L R, 8 Mad, 358

3 ——— and s 3, cl 10, and s. 7 *Power of attorney—Instrument of trust—*Ten misradsars of a village executed an instrument authorizing the person therein mentioned to recover for them from their former agent the perquisites and

STAMP ACT (I OF 1879)—continued.

other communal income appertaining to their mirasi rights, to cultivate their maniams, to distribute to them proportionately to their shares the profits of certain common land, etc. *Held* that the instrument was a power-of-attorney and should bear a stamp of Rs. 5. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 386

1. ——— sch. I, art. 52—*Tax—Receipt for money paid as taxes—Municipality, Receipt for house-tax exceeding twenty rupees.*—A receipt by a Municipality acknowledging payment of house-tax exceeding twenty rupees requires a receipt stamp under sch. I, art. 52, of Act I of 1879. IN RE KARACHI MUNICIPALITY. I. L. R., 12 Bom., 103

2. ——— and s. 3, cl. 17—*"Sarkhat"—Receipt.*—The defendant in a suit on a bond set up as a defence that the bond had been paid in part in sugarcane juice, and as evidence of this fact produced a document called a "sarkhat," alleged to be signed by the plaintiff, acknowledging the receipt of sugarcane juice, the price of which exceeded Rs. 20. There was nothing in this document which showed that the sugarcane juice had been received in part satisfaction of the bond. *Held* that the document was not a "receipt" within the meaning of the Stamp Act, 1879, but a memorandum of sugarcane juice supplied, and required no stamp. DEBI PRASAD v. RUPU. I. L. R., 6 All., 253

3. ——— *Receipt—Entry signed by creditor in debtor's book discharging debt.*—An entry made by a creditor in the khatta-book of the debtor, and signed by him for the payment of a sum of money in discharge of a debt, is a "receipt" within the meaning of s. 3, cl. 17, of the Stamp Act, and as such must be stamped under art. 52, sch. I of that Act. QUEEN-EMPRESS v. JUGGERNATH

[I. L. R., 11 Cal., 267

1. ——— sch. I, art. 54—*Release—One-anna adhesive stamp—Full stamp duty leviable.*—A release chargeable with four-annas stamp duty was executed on paper bearing a one-anna adhesive receipt stamp. *Held* that in calculating the stamp due the one-anna stamp ought not to be taken into consideration. Reference under Stamp Act, s. 46, I. L. R., 8 Mad., 87, followed. REFERENCE UNDER STAMP ACT, s. 50. I. L. R., 15 Mad., 259

2. ——— *Release—Partition, Deed of.*—A Hindu executed in favour of his father as representing the interest of the other members of his family, an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid. The instrument further provided that the lands allotted to the executant for life should go towards the shares of his sons at any partition effected after his death. *Held* that the instrument was not a deed of partition, but a release and should be stamped accordingly. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R., 18 Mad., 233

1. ——— sch. I, art. 57—*Settlement—Stamp duty.*—Under art. 57 of sch. I of the Stamp Act, 1879, stamp duty on a settlement is to be calculated

STAMP ACT (I OF 1879)—continued.

on the value of the property settled as set forth in such settlement. *Held* that these terms do not mean the value of the interest or interests created by the settlement, but refer to the value of the property settled, which, it was intended by the Legislature, should be set forth in the settlement. REFERENCE UNDER STAMP ACT, 1879. I. L. R., 8 Mad., 453

2. ——— and art. 54 and s. 3 (19)—*Settlement—Testamentary document—Trust-deed.*—An instrument called a trust-deed by the party executing it was intended to have immediate operation. It vested the property in the trustees at once, and the provisions as to the management and the ultimate beneficial interest in the property showed that it was contemplated that its operation might extend beyond the lifetime of the owner. *Held* that the instrument fell under the definition of a settlement in the Stamp Act (I of 1879), and should be stamped accordingly. REFERENCE BY THE COLLECTOR AND SUPERINTENDENT OF STAMPS, BOMBAY

[I. L. R., 20 Bom., 210

——— sch. I, art. 60—*Transfer of estates and mining rights held under lease.*—In consideration of a sum of £86,500, two coffee estates, opened out on land held under a lease for fifty years, together with the mining rights therein, also held under lease for a term of forty-eight years, were transferred by deed for the residue of those terms. *Held* that the stamp duty payable on the transfer deed was to be regulated by the provisions of cl. 60 of sch. I of the Stamp Act, 1879. REFERENCE FROM BOARD OF REVENUE UNDER STAMP ACT, 1879

[I. L. R., 5 Mad., 15

——— sch. II, art. 1 (b)—*Affidavit.*—S, being desirous of obtaining copies of certain records in a suit in the Court of the Subordinate Judge of Sirsi, appeared before the nazir and clerk of that Court, and made an affidavit to the effect that she was the heir and legal representative of one of the defendants in that suit, and needed the copies for the purpose of producing them in a suit filed against her in the Court at Karwar. The affidavit, together with a duly stamped application, was presented by her pleader to the District Judge, who, being of opinion that the affidavit should be on a stamped paper, referred the case to the High Court. *Held* that the affidavit was exempt from stamp duty under sch. II, art. 1 (b), of the Stamp Act (I of 1879). IN RE THE APPLICATION OF SHESHAMMA

[I. L. R., 12 Bom., 276

1. ——— sch. II, art. 2 (a)—*Agreement for, or relating to, the sale of goods.*—By an agreement in writing the vendor agreed to sell, and the purchaser to buy, certain salt for a price to be paid at a future date. The salt was to be at purchaser's risk from the date of the execution of the agreement, and, if not removed within a certain time, to revert to, and become the property of, the vendor. *Held* that this document was exempt from duty under sch. II, art. 2 (a), of the Indian Stamp Act, 1879. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 10 Mad., 27

STATEMENTS MADE OUT OF COURT.

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION

[I L R, 14 Bom, 572]

STATUTE

Promulgation of—

See OATH OF PROOF—MORTGAGE

[B L R, Sup. Vol., 415]

Repeal of, Effect of—

See CASES UNDER APPEAL—RIGHT OF APPEAL EFFECT OF REPEAL ON

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s 3

See CASES UNDER EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871

[I L R, 1 Bom, 287]

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—MADRAS ACT III OF 1865

[I L R, 1 Mad., 223]

See OFFENCE BEFORE PENAL CODE CAME INTO OPERATION

[I L R, 1 All., 599]

I L R, 2 Calc., 225

5 & 6 Edw III, c 18

See SALARY . 3 Moore's I A., 435

32 Hen VIII, c 34

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS

[I L R, 14 Calc., 176]

13 Eliz, c 5

See DEBTOR AND CREDITOR

[I Hyde, 178]

3 Ind. Jur. O S, 7

1 W. R., 41

I L R 10 Calc., 616

I R, 11 I A., 10

I L R, 11 Bom., 686

I L R, 13 Bom., 434

See 1st OLVENT ACT, s 26

[I L R, 3 Calc., 434]

See TRANSFER OF PROPERTY ACT, s 53

[I L R, 22 Calc., 185]

I L R, 23 Mad., 184

Doctrine of fraudulent conveyance void against creditors—The doctrine of a fraudulent conveyance being void as against creditors held to be a principle of Hindu as it is of English law under 13 Elizabeth, c 10 SHANKISORE SHAW & COWIE . 2 Ind. Jur. O S, 7

See SUDHREEKANA CHOWDHRAIN & GOPAL MOHUN SEIN 1 W. R., 41

STATUTE—continued.

27 Eliz, c 4.

See DEBTOR AND CREDITOR 1 W R, 41

See TRANSFER OF PROPERTY ACT, s 53

[I L R, 22 Calc., 185]

See VOLUNTARY CONVEYANCE

[22 W R, 60]

43 Eliz., c. 4

See BOMBAY MUNICIPAL ACT, 1868, ss 143,

144 I. L R, 16 Bom., 217

See WILL—CONSTRUCTION.

[14 B. L. R., 442]

3 Jac. I, c 7.

Stat 3 Jac I, c 7, has not been extended to India WILKINSON & ABHAS SIKKAR

[3 B. L. R., O C, 96]

21 Jac I, c 16

See ENGLISH LAW—LIMITATION

[5 Moore's I A., 43, 234]

See LIMITATION—STATUTES OF LIMITATION—STAT 21 JAC I, c 16

[5 Moore's I. A., 43]

See STATUTES, CONSTRUCTION OF [5 Moore's I. A., 234]

29 Car II, c 3

See GUARANTEE 5 B. L. R., 639

See CASES UNDER STATUTE OF FRAUDS

29 Car. II, c. 7.

See LORD'S DAY ACT

31 Car. II, c 2.

See FOREIGNERS I L. R., 18 Bom., 636

See HABEAS CORPUS II B. L. R., 392

2 & 3 Anne, c 4, s. 1.

See VENDOR AND PURCHASER—NOTICE

[I L R, 11 Bom., 168]

6 Anne, c 2, s 4 (Ireland)

See VENDOR AND PURCHASER—NOTICE

[I L R., 6 Bom, 168]

6 Anne, c 35, s 1

See VENDOR AND PURCHASER—NOTICE

[I L R, 11 Bom, 168]

7 Anne, c 20,

See VENDOR AND PURCHASER—NOTICE

[I L R., 11 Bom, 168]

8 Anne, c 14

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY

[3 B L R., O C, 56]

7 Will III, c 3, s 2

See WAGING WAR AGAINST THE QUEEN

[7 B. L. R., 63]

7 Geo I, c 21, s. 5

See BOTTOMRY BOND II Bom., O. C., 64

STATUTE—continued.

8 Geo. II, c. 6, s. 1.

See VENDOR AND PURCHASER—NOTICE.

[I. L. R., 6 Bom., 168

14 Geo. III, c. 48.

See CONTRACT—WAGERING CONTRACTS.

[I. L. R., 23 Bom., 191

21 Geo. III, c. 70, s. 5.

See HIGH COURT, JURISDICTION OF—
MADRAS—CIVIL.

[I. L. R., 8 Mad., 24

s. 8.

See MANDAMUS . 11 B. L. R., 250

See RIGHT OF SUIT—ACTS DONE IN EX-
ERCISE OF SOVEREIGN POWERS.

[I. L. R., 1 Calc., 11

s. 17.

See CONTRACT ACT, s. 27.

[14 B. L. R., 76

See GUARANTEE . 5 B. L. R., 639

See LANDLORD AND TENANT—BUILDINGS
ON LAND, RIGHT TO REMOVE AND COM-
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[I. L. R., 8 Calc., 582

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4 Geo. IV, c. 71, s. 17.

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3 ————— Duty of Court — Where the terms of an Act are clear and plain, it is the duty of the Court to give effect to it as it stands. *GURKIBULLAH SIKKAH v MOHUN LALL SHARRA* [I L R., 7 Calc., 127 8 C I R., 409]

4 ————— Preamble — A rule of construction is that the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose. *CHINNA AITAN v MAHOMED FAKRUDIN SATH*
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5 ————— Act XIII of 1856, Preamble and s 2 — Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation or to cut them down. *QUEEN EMPRESS v INDARJIT*
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6 ————— Pre-existing state of law — The pre existing state of the law, as recognized by the tribunals is one of the chief means of interpreting laws of procedure. *PRABHAKARHAT v VISHWANATHAR* I L R., 8 Bom., 313

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9 ————— Madras Municipal Act (I of 1834) — Inaccuracy in Act — Where in an Act of the Legislature the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy, and to execute the true intention of the Legislature. *JENNINGS v PRESIDENT, MUNICIPAL COMMISSION MADRAS*
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10 ————— "Objects and

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11. ————— *Specific Relief Act (I of 1877), s. 9—Objects and reasons for Bill—Intention of Legislature.—Quære—Whether in construing an Act the “objects and reasons” for the Bill before it was passed as indicating the intention of the Legislature, can be referred to.* MOOSA v. ESSA, I. L. R., 8 Bom., 241, referred to. KADU JHALA v. GOUR MOHUN JHALA

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12. ————— *Reference to objects and reasons and to report of Select Committee.—In construing a statute the Court cannot refer to the statement of objects and reasons attached to a Bill, or to the report of a Select Committee, or to the debates of the Legislature, but can only look to the statute itself.* QUEEN-EMPRESS v. KARTICK CHUNDER DAS, I. L. R., 14 Calc., 721, and ROMESH CHUNDER SANNYAL v. HIRU MONDAL, I. L. R., 17 Calc., 552, dissented from on this point. KADIR BAKSHI v. BHAWANI PRASAD

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14. ————— *Administrator-General's Act (II of 1874)—History of passing of Act—Object and reasons for Act and Report of Select Committee on Bill.—The course of legislation with reference to the creation of the office of Administrator-General and to his duties and powers reviewed and considered in construing Act II of 1874.* PER TREVELYAN, J.—The history of the passing of an Act and the intention of the Legislature in introducing it, though not admissible in England to explain a statute, have been in this country taken into consideration in construing Acts of the Legislature. PER PRINSEP, J.—The objects and reasons given by the Legislature on the introduction of a Bill, and the Report of the Select Committee on it, may be referred to in construing any Act to show the intention of the Legislature in passing it. QUEEN-EMPRESS v. KARTICK CHUNDER DAS, I. L. R. 14 Calc., 721, referred to. ADMINISTRATOR-GENERAL OF BENGAL v. PREM LALL MULLICK

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at a prior time when it first became law; the object being that the statutory law bearing on the subject should be collected and made applicable to the existing circumstances; nor can a positive enactment be annulled by indications of intention. at a prior time, gathered from previous legislation on the matter. Proceedings of the Legislature in passing a statute are excluded from consideration on the judicial construction of Indian, as well as British, statutes. ADMINISTRATOR-GENERAL OF BENGAL v. PREM LALL MULLICK . . . I. L. R., 22 Calc., 788 [L. R., 22 I. A., 107]

15. ————— *Proceedings of Legislature.—Per PIGOT, J.—Proceedings of the Legislature cannot be referred to as legitimate aids to the construction of an Act.* ADMINISTRATOR-GENERAL OF BENGAL v. PREM LALL MULLICK, I. L. R., 22 Calc., 788; L. R., 22 I. A., 107, followed. QUEEN-EMPRESS v. SRI CHURN CHUNGO

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16. ————— *Khotei Settlement Act (Bom. Act I of 1880)—Reference to Debate on Bill in Legislative Council.—For the purpose of construing an Act, the debate upon the Bill when before the Legislative Council is not to be referred to.* GOPAL KRISHNA PARACHURE v. SAKHOJIRAY

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17. ————— *Marginal notes to sections of Act.—Marginal notes are no part of an enactment.* DUKHI MOLLAH v. HALWAY

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18. ————— *Marginal notes to sections of Act.—Marginal notes to sections of an Act do not form part of the Act.* SUTTON v. SUTTON, L. R., 22 Ch. D., 511, and DUKHI MOLLAH v. HALWAY, I. L. R., 23 Calc., 55, followed. PUNAR-DEO NARAIN SINGH v. RAM SARUP ROY

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19. ————— *Codifying, Object of.—The object of codifying a particular branch of the law is that on any point specifically dealt with the law should thenceforth be ascertained by interpreting the language used in that enactment instead of, as before, searching in the authorities to discover what may be the law, as laid down in prior decisions. The language of such an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before.* BANK OF ENGLAND v. VAGLIANO, L. R., 1891, 4 C., 107, referred to. NORANDRO NATH SIRCAR v. KAMALABASINI DAS . . . I. L. R., 23 Calc., 563 [L. R., 23 I. A., 18]

20. ————— *Chutia Nagpore Encumbered Estates Acts (VI of 1876 and V of 1884)—Deo Estates Act (IX of 1886)—Marginal notes to Acts.—The State publication of the Indian Acts being framed with marginal notes, such notes*

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21

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22

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23

Distinction between affirmative commands and negative prohibition—Irregularities and illegalities—As a principle of the interpretation of statutes a distinction must be drawn between cases in which a Court or an official omits to do something which a statute enacts shall be done and cases in which a Court or an official does something which a statute enacts shall not be done. In the former case, the omission may not amount to more than an irregularity in procedure. In the latter the doing of the prohibited thing is *ultra vires* and illegal and therefore within jurisdiction.
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24

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25

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26

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27.

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28

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29

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30

Retrospective effect of Acts Principle as to—Mad Act VIII of 1865—In a suit for rent for 1865 1866, it was objected that pottahs and muchalkas were not exchanged as required by Act VIII of 1865, which came into force on 1st January 1866. Held (reversing the decision of the Civil Judge) that Act VIII of 1865 was inapplicable to the case. The general principle is that rights already acquired shall not be affected by the retro-action of a new law. Rules as to procedure are not exceptions but the question here was not one of procedural, but of material law.
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31.

Penal provision in statute—Retrospective effect—Retrospective effect is not to be given to the penal provision of a 2, Bengal Act VI of 1863.
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32. ————— *Penal statute—Bengal Excise Act (Beng. Act VII of 1878).*—Penal statute must be construed strictly, i.e., nothing is to be regarded as within the meaning of the statute which is not within the letter and clearly and intelligibly described in the very words of the statute itself. *EMPRESS v. KOJA LALANG* [I. L. R., 8 Cal., 214; 10 C. L. R., 155]

33. ————— *Penal statute—Act XXXI of 1860.*—A penal statute should, when its meaning is doubtful, be construed in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. *REG. v. BHISTA NIN MADANNA* . . . I. L. R., 1 Bom., 308

34. ————— *Penal Code (Act XIX of 1860), s. 499—English law of defamation.*—*Semble*—S. 499 of the Indian Penal Code should be construed without reference to the English law. *IN RE NAGARJI TRIKAMJI* I. L. R., 19 Bom., 340

35. ————— *Repeal by implication—Repugnancy.*—Statutes are not to be held to be repealed by implication, unless the repugnancy between the new provision and a former statute be plain and unavoidable. *SITAPATHI NAYUDU v. QUEEN* . . . I. L. R., 6 Mad., 32

36. ————— *Implied repeal—Civil Procedure Code, 1859, s. 187—Act IX of 1850, s. 101.*—A special enactment is not impliedly repealed by a subsequent general enactment, if the two enactments are not so repugnant as to be incapable of standing together. Act IX of 1850, s. 101, was not repealed by s. 187 of Act VIII of 1859. *SABAPATI MUDALIYAR v. NARAYANSTAMI MUDALIYAR* . . . 1 Mad., 115

37. ————— *Effect of repeal—Retrospective effect—Dekkan Agriculturists' Relief Act, 1879—General Clauses Consolidation Act, 1868, s. 6.*—The general rule is that a repealed statute cannot be acted on after it is repealed; but, as provided in s. 6 of the General Clauses Act, 1868, all matters that have taken place under it before its repeal remain valid. But a new order of a Court, not ancillary or provisional, but directing a further substantive step in the execution of a decree, is a new proceeding which should be governed by the law in force when the order is made, and not by the law which it repeals. An Act passed to promote some public important object, such as the protection of the property of the Dekkan agriculturists, may be given on that account a retro-active operation, if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the Act. *SHIVRAM UDARAM v. KONDAJI MURTAJI* [I. L. R., 8 Bom., 340]

38. ————— *Law governing suit when law is changed pending suit.*—The law as it exists when a suit is commenced must decide the rights of the parties to the suit, unless the Legislature has expressed a clear intention to vary the

STATUTES, CONSTRUCTION OF

—continued.

relative rights of the parties to each other in the new law. Rule followed in the interpretation of Act X of 1859. *BUNGSHEDHUR DOSS v. MAHOMED KHULFEL* . . . 1 Hay, 369.

39. ————— *Alteration of law while suit is pending—Act XIX of 1857, s. 219—Repeal, Effect of.*—Where the law is altered while a suit is pending, the law as it exists when the action was commenced must decide the rights of the parties, unless the Legislature, by the language used, shows a clear intention to vary the mutual relations of such parties. *GUJERAT TRADING COMPANY v. TRIKAMJI VELJI* . . . 3 Bom., O. C., 45.

40. ————— *Repeal, Effect of, on right of action.*—A right of action is not taken away by a change in the law, unless by express enactment; but in the case of mere procedure, unless something is said to the contrary, the new law, where its language is general in its terms, applies without reference to the former law or procedure. *FRAMJI BOMANJI v. HORMASJI BARJORJI* [3 Bom., O. C., 49.]

41. ————— *Right of suit—Act XVI of 1842—Act VIII of 1868, s. 1—Act XIV of 1870, s. 1.*—On the 27th of June 1866 it was agreed by and between B, a zamindar, and D, a raiyat, that the latter should pay Rs 20 annually as the rent of his holding, and that for the future no further sum in excess should be demanded or suit brought for enhancement of rent. At the date of the agreement Act XVI of 1842 was in force. The settlement of the district, where the land in respect of which the agreement was made was situate, expired on the 1st of July 1870, before when Act XVI of 1842 was repealed by Act VIII of 1868, which Act was repealed by Act XIV of 1870, both Acts saving any right or title which had already accrued. *Held* that no right of action to avoid or right to repudiate the engagement of the 27th of June 1866 accrued to the zamindar before the passing of those Acts. *DEOJEET v. BHUGWANT* . . . 6 N. W., 373

42. ————— *Gujarat Talukhdars' Act (Bom. Act VI of 1888), s. 31, cl. 2—Retrospective operation—Collector refusing to confirm sale without sanction under Act passed whilst decree was under execution.*—A decree upon a mortgage-bond passed against part of a talukhdar's estate on the 15th August 1887 was transferred under s. 320 of the Civil Procedure Code (Act XIV of 1882) to the Collector for execution. The property was sold on the 5th August 1889, but the Collector refused to confirm the sale, as the sanction of the Governor in Council under cl. 2, s. 31 of the Talukhdars Act (Bombay Act VI of 1888), which came into force on the 25th March 1889, had not been obtained. *Held* that the section was not retrospective in its operation, and that the sale should be confirmed, although no sanction had been obtained. When the Act passed, the plaintiff had already acquired a vested right by the decree to have the property sold, and the presumption was that the Legislature did not intend

STATUTES, CONSTRUCTION OF

—continued

to interfere with that vested right That presumption was not rebutted by any intention to interfere appearing in the Act itself **KALIAN MOTI v. PATHU BHAI FALSTHAI** **I L R., 17 Bom., 289**

43. — *Statutes making contracts void and those prohibiting actions on them*—The distinction between enactments which declare contracts absolutely void and those which simply provide that no action shall be brought upon such contracts pointed out **VISHAPPA v. RAMA-TOGI** **2 Mad., 341**

44. — *Statute imposing duty—Action for failure to perform it*—Where a statute imposes a duty, it, without express words gives an act on for the failing to perform that duty, and for wrongfully performing it **PONNUSAMY TEVAR v. COLLECTOR OF MADURA** **3 Mad., 35**

45. — *Limitation Act, XIV of 1859 ss 20, 21*—In interpreting statutes the words "must" and "shall" may, in some cases

CHAND

[I L R., 3 Cal., 47; I L R., 4 I A., 127]

46. — *Hindu Wills Act*

47. — *Land Acquisition Act*—Acts relating to the acquisition of lands for public purposes must be construed strictly in favour of the subject **SORABJI NASSARVANJI DUNDAS v. JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY** **[12 Bom., 250]**

48. — *Statute of Limitations, 21 Jac I, c 16*—Where words have been long used in a technical sense and have been judi

STATUTES, CONSTRUCTION OF

—continued

49. — *Bengal Rent Act, X of 1859 s 77—Meaning of "determined"*—The word "determined" meant legally decided by a Court of competent jurisdiction **GHALIB ALI v. KHILLOO**

[3 N W., 51; Agra, F B., Ed. 1874, 243]

50. — *Road Cess Act (Beng Act X of 1871)—Interpretation clause, Construction of*—In a suit on a bond by which certain land admittedly lakhiraj was mortgaged, the purchaser of a portion of the mortgaged property at an auction sale for arrears of road cess due under Bengal Act X of 1871 was added as a defendant and the lower Courts holding that the effect of such a sale was to pass the property to the defendants free of encumbrances, made a decree excluding that portion from liability in respect of the mortgage bond. Held on the construction of Bengal Act X of 1871 that the sale had no such effect and that the whole of the property was liable to be sold in satisfaction of the plaintiffs claim. Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that word occurs it is not the effect of an interpretation clause that the thing defined has annexed to it every incident which may seem to be attached to it by any other Act of the Legislature. It does not follow therefore that because lakhiraj property is defined in the Road Cess Act 1871, to be a tenure all the interests and consequences attached by other Acts to tenures generally, or to particular classes of tenures, become annexed to lakhiraj property. **UMACHURN BAG v. AJADANNISSA BIBEE** **[I L R., 12 Cal., 330]**

51. — *Tax illegally levied*—A statute not only enacts its substantive provisions but as a necessary result of legal logic it also enacts as a legal proposition on everything essential to the existence of the specific enactments. Where the Legislature has imposed certain duties both upon the tax payer and upon the Municipal Commissioners, and those duties as to the tax payer enforceable by

at which the duties are to be performed **LEMAN v. DAMODARAYA** **I L R., 1 Mad., 158.**

52. — *Acts imposing taxes—Ambiguity in Acts*—In order to impose a tax, due, rate or toll upon a subject the framers of the Act or bye law under which such tax etc., is imposed

legal import with the words "out of the realm" or "out of the land" or "out of the territories" and are not to be construed literally. **RECKMANOTTE v. LULLOBBROT MOTTICHUND** **5 Moore's I. A., 234**

the bye-law *Revenue*—that which a tax is imposed upon goods imported into a town for consumption,

STATUTES, CONSTRUCTION OF

—continued.

and such goods, after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time. *DULLABH SHIVLAL v. HOPE* 8 Bom., A. C., 213

53. ————— *Bomba Municipal Act (III of 1872), s. 195—Act for public benefit.*—Where an Act gives power to a Municipality or Corporation for the public benefit, a more liberal construction could be given to it than where powers are to be exercised merely for private gain or other advantage. *OLLIVANT v. RAHIMTULA NUR MAHOMED* [I. L. R., 12 Bom., 474

54. ————— *Letters Patent, High Court, cl. 12.*—Every statute is to be interpreted and applied so far as its language admits, so as not to be inconsistent with the comity of nations or with the established rules of international law. All legislation is, *prima facie*, territorial. It binds all subjects of the Crown, but only such subjects of other countries as have brought themselves within the allegiance of the Sovereign. *KESROWJI DAMODAR JAIRAM v. KRIMJI JAIRAM* I. L. R., 12 Bom., 507

55. ————— *Stat. 24 & 25 Vict., c. 67, s. 22—Legislative power of the Governor-General in Council*—"Indian territories now under the dominion of Her Majesty"—"*Snid territories*"—28 & 29 Vict., c. 17, Preamble—32 & 33 Vict., c. 98, s. 1.—The Governor-General in Council has power to make laws and regulations binding on all persons within the Indian territories under the dominion of Her Majesty, no matter when such territories were acquired. His legislative powers are not limited to those territories which, at the date when the Indian Councils Act (24 & 25 Vict., c. 67) received the royal assent (i.e., the 1st August 1841), were under the dominion of Her Majesty. In the preamble to the 28 & 29 Vict., c. 17, and in s. 1 of the 32 & 33 Vict., c. 98, Parliament has placed this construction upon s. 22 of the Indian Councils Act. Even if that construction was erroneous, it has been so declared by Parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future. *Postmaster-General of the United States v. Early*, *Curtis' Rep., U. S., p. 86*, referred to. It must be presumed that the laws and regulations of the Governor-General in Council are known to Parliament. *Empress v. Burah*, I. L. R., 3 Calc., 143; I. L. R., 4 Calc., 183, referred to. *ABDULLA v. MOHAN GIR*

[I. L. R., 11 All., 490

56. ————— *Repeal of statute which repeals another, Effect of—General Clauses Consolidation Act (X of 1887), s. 7—Reformatory Schools Act (V of 1876), s. 2—Criminal Procedure Code (Act X of 1872), s. 318; (X of 1882), ss. 3 and 399.*—The repeal of a statute repealing another statute does not revive the repealed statute. The law in India as embodied in s. 7 of the General Clauses Act (X of 1897) is the

STATUTES, CONSTRUCTION OF

—concluded.

same as the law in England. *Queen-Empress v. Madasami*, I. L. R., 12 Mad., 94, and *Queen-Empress v. Manaji*, I. L. R., 14 Bom., 351, referred to and approved of. *DEPUTY LEGAL REMEMBRANCER v. AHMED ALI* I. L. R., 25 Calc., 333 [2 C. W. N., 11

STATUTORY POWERS.

See CASES UNDER INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS.

See RAILWAY COMPANY.

[10 B. L. R., 241

See ZAMINDAR 14 B. L. R., 209 [I. R., 1 I. A., 364

TAY OF EXECUTION.

See CASES UNDER EXECUTION OF DECREE—STAY OF EXECUTION.

See PRIVY COUNCIL, PRACTICE OF—STAY OF EXECUTION PENDING APPEAL.

STAY OF PROCEEDINGS.

See CRIMINAL PROCEEDINGS.

[I. L. R., 18 Bom., 581
I. L. R., 23 Calc., 610
2 C. W. N., 498, 639
3 C. W. N., 758

See INSOLVENT ACT, s. 9.

[I. L. R., 21 Bom., 297

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS. I. L. R., 21 Calc., 561 [I. L. R., 18 Bom., 65

1. ————— *Suits in respect of same subject-matter in different Courts—Civil Procedure Code, 1877, s. 20.*—*A*, who was employed by *B & Co.* as their agent at Calicut, instituted a suit for the balance of an account against his principals in the Court of the Subordinate Judge there in July 1878. In December of the same year, *B & Co.* instituted the present suit against *A* for an account and for damages caused by his alleged negligence. Held that, as in both suits practically the same issues were triable, *A* was entitled, as having been first to institute his suit, to proceed in the Court in which he had chosen to bring his suit and to have the other suit stayed, but without prejudice to the right of the plaintiffs in the latter suit to institute a cross claim in the Calicut Court. *MECKJEE KHETSSEE v. KASOWJEE DEVA CHUND* [4 C. L. R., 282

2. ————— *Procedure—Venue—Right of plaintiff to choose place of trial—Civil Procedure Code (Act XIV of 1882), ss. 27 and 53.*—The plaintiff brought this suit in the High Court

STAY OF PROCEEDINGS—concluded

at Bombay against the defendant for defamation alleged to be contained in a notice that appeared in the *Bombay Gazette* on the 9th April 1884. The defendant was the Chairman of the Hinganghat Mill Company. The plaintiff had been for some years secretary and manager of that Company. In April 1888 he was dismissed from his appointment, and shortly afterwards he filed a suit (No 1 of 1888) in the Court of the Deputy Commissioner at Wardha in the Central Provinces (which was the Court of the district in which Hinganghat is situated) for wrongful dismissal. The present suit was filed in July 1888. The defendant took out a summons calling on the plaintiff to show cause why the suit should not be stayed and the plant returned to the plaintiff in order that, if he thought proper, it might be presented in the Court at Wardha. The defendant relied on the following points: (1) that neither he nor the plaintiff resided or carried on business at Bombay, (2) that all the defendant's witnesses resided at Wardha, (3) that the other suit (No 1 of 1888) was pending at Wardha and that the decree of that suit would decide the present case also. *Held* that the plaintiff was entitled to sue in Bombay. (*JEFFERY v. BUCKCHAND MOHLA*)

[I L R, 13 Bom, 178]

3 — Civil Procedure Code (Act XIV of 1882) ss 54, 54b—Part of suit, Preliminary decree in—Preliminary Decree Appeal against—Powers of Appellate Court to stay subsequent proceedings—There is no provision in the Code of Civil Procedure which authorizes a Court to which an appeal is preferred sign a preliminary decree for partition to stay pending the hearing of the appeal proceedings taken by the Court which passed the decree subsequent to the passing of such decree. (*BASANTA KUMAR SIKKAR v. BRUT NATH SIKKAR*)

[C W N, 284]

STEAM TUGS

1 — Regulation as to tugs—*Errer navigation—Towing—*A party having two tugs A and B undertakes to supply tugs to two vessels P and Q in the order of their engagements as soon as the tugs are free. A is first free, and tows P, which has the prior claim to Diamond Harbour, where she becomes disabled. B subsequently tows Q and finding A disabled at Diamond Harbour leaves Q and tows P out to sea, returning subsequently for Q. *Held* that B was not justified in leaving Q but that she ought to have towed her out to sea without interruption. (*HOWJEE NUSSEER WANJEE v. JOHANNES*)

[1 Hyde, 293]

2 — Government pilots—*Order to Government pilots prohibiting their engaging tugs at exorbitant charge—*The Government may prohibit its pilots from allowing any vessels under their pilotage charge to be taken in tow of a steamer the owners of which will only render their services on exorbitant terms. (*ROGERS v. RAFAEL DUTT*)

[W. R., P. C., 51; 8 Moore's I. A., 103]

STOLEN PROPERTY.

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1 OFFENCES RELATING TO . 8934

2 DISPOSAL OF BY THE COURT 8939

See CHARGE TO JURY—SPECIAL CASES—
STOLEN PROPERTY

[I L R, 15 Bom, 389]

1 OFFENCES RELATING TO

1 — Concealment of stolen property—*Penal Code, ss 411, 414—**Held* that the prisoner who having received stolen property concealed it in his house could not be charged and convicted for two offences viz., of having dishonestly received stolen property under s 411 Penal Code, and of assisting in the concealment of stolen property under s 414 which applies to persons who dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it. (*GOVERNMENT v. BOWLIA*)

[1 Agra, Cr, 9]

2 — Penal Code (Act XLV of 1860) s 411—Evidence—Pursuing out stolen property concealed in a place not under the accused's control. Where the sole evidence against a person charged with an offence under s 411 of the Penal Code consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person. *Held* that this was not in itself sufficient evidence to support a conviction under the above-mentioned section. (*QUEEN v. EMPRESS v. GORINDA*)

[I L R, 17 All, 578]

3 — Assisting in concealing or disposing of stolen property—*Guliyknalege—*Where persons are charged with assisting in concealing or disposing of property which they know or have reason to believe to be stolen, the nature of the property as well as the circumstances under which it was being made away with must be taken into consideration. (*REG v. HARISHANKAR FAKIRBHAI*)

[3 Bom, 136 2nd Ed, 130]

4 — Voluntarily assisting in the disposal of stolen property—*'Believe'—**'suspect'—**Penal Code s 414—*The word "believe" in s 414 of the Penal Code is much stronger than the word "suspect," and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property. It is not sufficient in such a case to show that the accused person was careless or that he had reason to suspect that the property was stolen or that he did not make a direct inquiry to ascertain whether it had been honestly acquired. (*EMPRESS v. RANGU TIMAJI*)

[I L R, 6 Bom, 402]

5 — Penal Code ss 193 and 414—Intention to get innocent person punished—*Separate offences—*Conviction of—Where the offender was convicted of having voluntarily assisted in concealing stolen railway property in a certain person's house and field, with a view to having such

STOLEN PROPERTY—continued.**1. OFFENCES RELATING TO—continued.**

innocent person punished as an offender,—*Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code. *EMPRESS v. RAMESHAR RAI* **I. L. R., 1 All., 379**

6. ——— Money obtained on forged money orders—Penal Code, s. 410.—Money obtained upon forged money orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410. *QUEEN v. MON MOHUN ROY* [24 W. R., Cr., 33]

7. ——— Receiving stolen property—Proof of guilty knowledge.—In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with guilty knowledge. *QUEEN v. YAR ALI*. IN THE MATTER OF THE PETITION OF YAR ALI [13 W. R., Cr., 70]

8. ——— Evidence—Penal Code (Act XLV of 1860), s. 411.—To constitute the offence of receiving stolen property, there must be some proof that some person other than the accused had possession of the property, before the accused got possession of it. *ISHAN MUCHI v. QUEEN-EMPRESS* **I. L. R., 15 Cal., 511**

9. ——— Penal Code, ss. 411 and 409—Criminal breach of trust.—A prisoner cannot be convicted, under s. 411 of the Penal Code, for dishonestly receiving or retaining stolen property, in respect of property which he himself has been convicted, under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust. *QUEEN v. SHUNKUR* **2 N. W., 312**

10. ——— Property stolen at dacoity—Penal Code, s. 412—Proof of commission of dacoity.—In order to sustain a conviction, under s. 412 of the Penal Code, of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits. *QUEEN v. JAGESHUR BAGDEE* **7 W. R., Cr., 109**

QUEEN v. BISHOO MANJEE **9 W. R., Cr., 16**

11. ——— Evidence of dishonest receipt of property.—Where stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained. IN THE MATTER OF THE PETITION OF RAMJOY KURMOKAR **25 W. R., Cr., 10**

12. ——— Penal Code, s. 411—Animal "nullius proprietas"—Bull set at large in accordance with Hindu religious usage—Appropriation of bull.—A person was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had

STOLEN PROPERTY—continued.**1. OFFENCES RELATING TO—continued.**

been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore "nullius proprietas," and incapable of larceny being committed in respect of it; and that the conviction must be set aside. *QUEEN-EMPRESS v. BANDHU* [I. L. R., 8 All., 51]

13. ——— Penal Code, ss. 83, 411—Discharge of child-thief—Doli incapax—Proof of theft—Conviction of receiver.—The fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of s. 83 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen. *QUEEN v. BEGABAYI KRISHNA SARANU* **I. L. R., 8 Mad., 373.**

14. ——— Habitually receiving stolen property—Penal Code, s. 413.—A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates. *QUEEN-EMPRESS v. BABURAM KANSARI* **I. L. R., 19 Cal., 190.**

15. ——— Possession of stolen property—Evidence of theft.—Possession of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume, in the absence of explanation, that the person in whose possession the property is found must have obtained the possession by stealing. *QUEEN v. POROMESHUR AHEER* **23 W. R., Cr., 16**

16. ——— Guilty knowledge, Inference of.—Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession, and unless he can do so a jury may fairly infer, in such circumstances, that it was with a guilty knowledge that the prisoner took that which he knew to be not his own. *QUEEN v. SHURBUFFOODDEEN* **13 W. R., Cr., 26.**

17. ——— Fraudulent possession of property reasonably suspected of being stolen—Police Act (XIII of 1856), s. 35, cl. (1)—Duty of the prosecution to prove to the satisfaction of the Court that there exist reasonable grounds of suspicion—Onus of proof.—A person cannot be called on to account for his possession of property under s. 35, cl. (1), of the Police Act (XIII of 1856),

STOLEN PROPERTY—continued**1 OFFENCES RELATING TO—continued**

unless there is evidence which satisfies not the police officer, but the Court after judicial consideration that such property 'may be reasonably suspected of being stolen or fraudulently obtained' **QUEEN EMPRESS v DHANJIBHAI EDULJI**

[I. L. R., 20 Bom, 348]

18

Presumption—

Penal Code s 411—Receiver of stolen property—Presumption as to possession of property after theft—A common brass drinking-cup was stolen in October 1883 and was discovered in the possession of the accused in September 1884. *Held* in a case in which the accused was tried for receiving stolen property, that his possession of the stolen property, coupled with the fact that he had failed to give an account as to how he became possessed of the property, would under ordinary circumstances raise a probable presumption of his guilt but where, as in this case, such possession was not a recent possession

how his possession was acquired. *1st* question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen **REX v ADAM 3 C & P, 600** **REX v COOPER 8 C & P, 318**, **REX v PARTRIDGE 7 C & P 601** followed **INA SHRIKH v QUEEN EMPRESS** I. L. R., 11 Calc., 161

19

Penal Code s 411

—India rubber, Possession of—Smuggling—Where a person was charged under s 411 of the Penal Code with having received stolen property (rubber the produce of the Government forests at Cachar), and it was not proved that the rubber came from the

QUEEN v DASSORUT DASS 16 W. R., Cr, 63

And see **QUEEN v GOURNA CHURN DASS**
[19 W R, Cr, 38 note]

20

Presumption—

Dishonest receipt of stolen property—Dacoity—Jury—In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused. The fact

21.

Possession of

members of joint family—Finding stolen property in joint family house—*Uld* the bare finding of stolen property and arms in the house of a

STOLEN PROPERTY—continued**1 OFFENCES RELATING TO—continued**

joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction **QUEEN EMPRESS v NIRMAL DASS** I. L. R., 22 All, 445

22.

Penal Code,

s 411, 414—Concealment of stolen property—Husband and wife—The only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband. *Held* that that constituted the possession of the husband rather than that of the wife **QUEEN v DESILVA** 5 N W, 120

23

Res nullius—Bull set at large

in accordance with Hindu religious usage—Penal Code s 410 411—A Hindu who upon the death of

which thereafter is not property which is capable of being made the subject of dishonest receipt or possession within the meaning of ss 410 and 411 of the Penal Code **QUEEN EMPRESS v BANDHU I L R 8 All, 51**, and **QUEEN EMPRESS v JAMUNA, Weekly Notes All, 1894, p 87**, referred to **QUEEN EMPRESS v NIRMAL** I. L. R., 9 All, 848

24

Penal Code

ss 403 429—Bull dedicated to an idol—A bull dedicated to an idol and allowed to roam at large is not *fera bestia* and therefore *res nullius* but *prima facie* the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership. Such an animal can therefore be the subject of theft and criminal misappropriation **QUEEN EMPRESS v NALLA**

[I. L. R., 11 Mad., 145]

25

Retaining stolen property—

Penal Code s 411—Knowledge—The offence of dishonest retention of stolen property under s 411 of the Penal Code may be complete without any guilty knowledge at the time of the receipt. **ANONYMOUS**

[4 Mad, Ap, 42]

26

Evidence of

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27

Penal Code,

s 411—Proof that the property is stolen property necessary—Guilty knowledge of retainer—Where a person is accused of an offence under s 411 of the Penal Code he cannot where the circumstances do not raise the presumption that he received the property knowing it to be stolen be convicted of that offence merely because he is in possession of the property and does not account for his possession. The prosecution must prove both that the property was stolen and that the accused received it dishonestly. **QUEEN EMPRESS v BURKE** I. L. R., 6 All, 224

28.

Penal Code,

s 411—Dishonest retention of stolen property—

STOLEN PROPERTY—continued.**1. OFFENCES RELATING TO—concluded.**

Property belonging to different owners—Separate convictions.—Where a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times,—*Held* that such person could not properly be tried and convicted under s. 411 of the Penal Code separately in respect of the property identified by each owner. *Ishan Muchi v. Queen-Empress, I. L. R., 15 Cal., 511, approved. QUEEN-EMPRESS v. MAKHAN*

[I. L. R., 15 All., 317]

29. ————— *Dishonestly retaining stolen property—Penal Code, s. 411—Legal presumption.*—Where a document, purporting to be a Collectorate notice forming part of a record and found by the Court to be genuine, was discovered to be in the possession of persons charged with retaining stolen property, it was held that, in a matter of this kind, it was right to raise legal presumptions arising out of the ordinary course of business and to dispense with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be convicted of receiving stolen property knowing it to be stolen, it must be shown that property has been stolen,—*Held* that the disappearance of the document from the record plus the substitution of an imitation of it in its place showed that it must have been taken with a dishonest object. *ISHAN CHANDRA CHANDRA v. QUEEN-EMPRESS* . I. L. R., 21 Cal., 328

2. DISPOSAL OF, BY THE COURT.

30. ————— *Right to stolen property—Property in cash or notes.*—The property in stolen cash, and bills or notes payable to bearer which circulate as cash, is inseparable from possession ordinarily. The property in stolen goods remains in the person from whom they are stolen. ANONYMOUS

[1 N. W., Ed. 1873, 298]

31. ————— *Currency note—Right to, as between Government and the person from whom it has been stolen, where thief has cashed it at treasury.*—A R O currency note was changed by one M at the Government Treasury on the Shevaroy Hills. M was subsequently convicted by the Sessions Court of Salem of having stolen the note from one S. The note was produced in evidence at the trial, and the Court directed it to be given up to S, from whom it had been stolen. *Held* that the Sessions Court was wrong. A note of this kind being in legal view money, the property in it passes by mere delivery, and nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule. *QUEEN v. MUPPEN. IN THE MATTER OF THE PETITION OF COLLECTOR OF SALEM*

[7 Mad., 233]

32. ————— *Order of Court as to property—Restoration of property by Criminal Court—Remedy by suit in Civil Court.*—If personal property, of which a complainant has been forcibly or illegally deprived, comes into the Magistrate's hands,

STOLEN PROPERTY—continued.**2. DISPOSAL OF, BY THE COURT—continued.**

he may order its restoration to its owner, otherwise the complainant must seek to recover it or its value through the Civil Court. *RAMJEEBUN DOOBAY v. LUCHMONEE DABEA* . W. R., 1864, Cr., 5

33. ————— *Criminal Procedure Codes, 1861, 1869, s. 132A.*—Under s. 132A, Criminal Procedure Code (Act VIII of 1869), no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court: such order must be made at the time of passing judgment. *IN THE MATTER OF THE PETITION OF RASH MOHUN GOSHAMY. RASH MOHUN GOSHAMY v. KALI NATH RAHA* . 19 W. R., Cr., 3

34. ————— *Disposal of, by Magistrate where no order had been made by lower Court—Criminal Procedure Code, 1869, ss. 132A, 132B.*—The Assistant Magistrate, on a review of the proceedings of the Subordinate Magistrate, passed orders directing that certain produce should be delivered over to the parties whom he considered entitled thereto. The Subordinate Magistrate had passed no orders under s. 132A of the Criminal Procedure Code. *Held* that the orders of the Assistant Magistrate were made without any jurisdiction. ANONYMOUS . 5 Mad., Ap., 22.

35. ————— *Disposal of, where prisoner acquitted.*—Where a person was accused of dishonestly receiving stolen property, knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen,—*Held* that the Magistrate was competent, believing that the property was stolen, to make an order under s. 418 of Act X of 1872 regarding its disposal. *EUPREES v. NILAMBHAR BABU* . I. L. R., 2 All., 276

36. ————— *Disposal of, by Criminal Court—Criminal Procedure Code, 1872, Ch. XXX, ss. 415, 416, 417—Restoration of property made over by the police.*—A was charged before the police with theft of certain property. The police considered that no theft had been committed, and reported the matter to a second class Magistrate, who, agreeing with the police, ordered the property to be restored to A. On application by the complainant, the District Magistrate found that A had removed, though not dishonestly, the property from B, a deceased person, and ordered the property to be given by the police to B's heirs. It was given. *Held* that the provisions of Ch. XXX of the Code of Criminal Procedure do not apply to such a case. Ss. 415, 416, and 417 contemplate proceedings preliminary to, and independent of, inquiry. Upon general principles, where there has been an inquiry, or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound to restore that property into the possession of the person from whom it is taken, unless, as provided for by s. 418, such Court is of opinion that "any offence appears to have been committed" regarding it, then such order as appears right for the disposal of the property may be made. The High Court

STOLEN PROPERTY—continued**2 DISPOSAL OF BY THE COURT—continued**

cannot direct the restoration of the property already delivered by the police under the illegal order of the District Magistrate. *IN RE ANNAPURNABAI*

[I L R, 1 Bom, 630]

IN THE MATTER OF THE PETITION OF BASUDEB SURMA GOSSAIN BASUDEB SURMA GOSSAIN v NAZIRUDDIN

I L R, 14 Cal, 834

But see *IN RE HARKE BUNDHOO SANTRA*

[5 W R., Cr, 55]

37 ————— *Criminal Procedure Code 1852 s 517—High Court's Criminal Procedure Act (X of 1875) s 115—'Any property'—Reference to Police Magistrate—Evidence on reference Review—The words 'any property' in s 115 of the High Court's Criminal Procedure Act (X of 1875) include as well property voluntarily produced before the Magistrate by a witness in the case as property seized by the police or found on the*

he considered upon the statements of their respective cases to have made out a *prima facie* case, and it is not competent to the High Court to review the decision at which the Magistrate arrives. *REG v RAMDAS SAMALDAS EX PARTE MADAVJI DHAR- RAMSI*

12 Bom, 217

38. ————— *Criminal Procedure Code 1852 s 523 Code of Criminal Procedure 1874, ss 415 and 416—Delivery of property seized or stolen—Inquiry into ownership—The*

deliver it to the person entitled to it instead of to the person from whom it is taken. *In re Annapurnabai, I L R, 1 Bom, 630, distinguished QUEEN EMPRESS v JOTI RAJMAK*

I L R, 8 Bom, 338

39 ————— *Criminal Procedure Code 1852 ss 517 520 523—Order of Magistrate restoring property alleged to be stolen—District Magistrate Power of, to set aside such order—Where on acquittal a Criminal Court passes an order for restoration of property under s 517 of the Criminal Procedure Code (Act X of 1852) the proper course for the District Magistrate, if he thinks the order improper is to direct it to be stayed under s 520 and not to treat the property as subject to an order under s 523 of the Code, and set it aside. QUEEN EMPRESS v ABRAHAM UMAR*

[I L R, 8 Bom, 576]

40 ————— *Criminal Procedure Code, 1852, s 517—Order as to property*

STOLEN PROPERTY—continued**2 DISPOSAL OF BY THE COURT—continued**

as to which offence has been committed—Discharge of accused—On the dismissal of a charge against certain persons of criminal misappropriation of an elephant the Magistrate under s 517 of the Criminal Procedure Code ordered the elephant to be given to the Executive Engineer of the district, holding that it was the property of Government. Held that the dismissal of the charge being in fact a finding that no offence had been committed in respect of the elephant the Magistrate's order was illegal and must be set aside. In setting it aside the High Court held, however following *In re Annapurna Bai, I L R 1 Bom 630* that they had no power to order restitution of the elephant. *IN THE MATTER OF THE PETITION OF BASUDEB SURMA GOSSAIN BASUDEB SURMA GOSSAIN NAZIRUDDIN*

[I L R., 14 Cal, 834]

41. ————— *Criminal Procedure Code s 517—Disposal of calf not in case at time of theft—R's cow having been stolen the thief after a lapse of a year and a half was convicted six months after the theft. V innocently purchased the cow which while in his possession had a calf. The Magistrate under s 517 of the Code of Criminal Procedure ordered that the cow and calf should be delivered up by V to R. Held that as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal. IV RE VERNEDH*

I L R, 10 Mad, 25

42. ————— *Criminal Procedure Code (Act X of 1852) ss 517 and 523—Disposal of property produced before a Court during inquiry—Restoration of previous possession if no offence has been committed—S 517 of the Code of Criminal Procedure is the only section under which a Court can make an order for the*

Otherwise the only legal order which the Court can pass is one restoring the previous possession. A Presidency Magistrate finding the evidence not sufficient to warrant a conviction discharged the accused but ordered the property which had been produced during the inquiry to be detained until the title of the rightful owner was proved before a Civil Court. On a subsequent day he apparently acting under s 523 of the Code ordered the property to be delivered to the complainant from whom he possessed on it had not been taken. Held that both the orders were *ultra vires*. The Magistrate was therefore directed to dispose of the property in a legal manner. If he found that the case fell within s 517 he should pass such order as he thought fit; if he found that it did not he must restore the previous possession. *IN RE DEVIDY DEVIAPRASAD*

[I L R., 22 Bom, 844]

43. ————— *Criminal Procedure Code (Act X of 1852), ss 517, 523 521—*

STOLEN PROPERTY—continued.

DISPOSAL OF, BY THE COURT—continued.
Order as to standing crops on land of which person asks to be restored to possession.—On 27th September 1897 complainant charged one R with criminal trespass under s. 447 of the Penal Code (Act XLV of 1860). He alleged that in the previous July R had entered into possession of the land and sowed rice upon it, and that, when in the month of September 1897 he (the complainant) went to the field, R had turned him out by force and refused to vacate the land. On the 17th November 1897 the case was heard by the third class Magistrate, who convicted R of the offence charged. On the following day (18th November 1897) the complainant applied to the Magistrate under s. 522 of the Code of Criminal Procedure (Act X of 1882) to be restored to possession of the land and of the standing crops. The Magistrate ordered possession of the land to be restored to the complainant, but attached the crops under Ch. XLIII of the Criminal Procedure Code. Thereupon one P intervened and claimed the crops as having been sown by himself. His claim was disallowed, and the crops were ordered to be sold and the proceeds credited to Government under ss. 523 and 524 of the Code. *Held* that the order passed under ss. 523 and 524 with reference to the crops were illegal. The crops were not property in respect of which the offence was committed, nor were they used in the commission of the offence. They were not such property as is referred to in s. 517, 523, or 524 of the Criminal Procedure Code. **NARAYAN GOVIND v. VISAJI** I. L. R., 23 Bom., 494

44. *Criminal Procedure Code, 1882, ss. 517 and 523—Evidence of ownership—Evidence of officer, Admissibility of, for other purposes than as a confession.*—Statements made to the police by accused persons as to the ownership of the property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an inquiry held by the Magistrate under s. 523 of the Criminal Procedure Code (Act X of 1882). An order, after trial, made by a Criminal Court for the restoration of property under s. 517 of the Criminal Procedure Code (Act X of 1882) is conclusive as to the immediate right to possession; where an order has to be made under s. 523, the Magistrate may in the inquiry proceed on such evidence as is available and make an order for handing the property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion. The High Court declined to interfere with an order, made by a Magistrate under s. 523 of the Criminal Procedure Code, for the delivery of property, where the Magistrate made such order upon the mere evidence of confession of the accused to the police that the property stolen from the adjudged owner.

ROYAN MANEKCHAND I. L. R., 9 Bom., 131

STOLEN PROPERTY—concluded.

2. DISPOSAL OF, BY THE COURT—concluded.
45. *Criminal Procedure Code, 1882, s. 517—Order for the disposal of property by first class Magistrate—Appeal from such order to the Sessions Court.*—A decree-holder preferred a complaint against his judgment-debtors, charging them, under s. 207 of the Penal Code (Act XLV of 1860), with concealing certain moveable property for the purpose of screening it from execution. Some property was found by the police to have been so concealed in the house of a third person. The chief constable took possession of it, and kept it in his custody pending the inquiry which the first class Magistrate was about to make in the matter. Before the Magistrate entered upon the inquiry, the complainant caused the property in the custody of the police to be attached and sold in execution of his decree against the accused. At the Court-sale thereupon the Magistrate ordered the property to be handed over to him. This order was reversed on appeal by the Sessions Judge. *Held* that the order of the first class Magistrate for the disposal of the property was not, and could not have been, made under s. 517 of the Criminal Procedure Code (Act X of 1882), as the Magistrate did not hold any inquiry, nor form any opinion on the conclusion of such inquiry as to whether "any offence appeared to have been committed regarding such property." The Sessions Judge had therefore no jurisdiction to hear an appeal from the first class Magistrate's order. **IN F. ANANT RAMCHANDRA LOTLIKAR** [I. L. R., 10 Bom., 1]

46. *Criminal Procedure Code, 1882, ss. 517, 520.*—An order passed under s. 517 of the Code of Criminal Procedure be revised by a Court of appeal, although no appeal has been preferred in the case in which such order was passed. **QUEEN-EXPRESS v. AHMED** [I. L. R., 9 Mad.]

STOPPAGE IN TRANSITU.

See SALE OF GOODS. [I. L. R., 17 B.]
See VENDOR AND PURCHASER—RIGHTS AND LIABILITIES OF. [2] I. L. R., 14

STORING JUTE.

Storage of jute without Beng. Act II of 1872, s. 34—Criminal Code, 1861, Ch. XV.—Before a Court storing jute in a warehouse without a licence had under s. 4 of Bengal Act II of 1872 should be taken under the provisions of the Criminal Procedure Code, 1861, as revised of the former Act. **QUEEN v. BRUG** 18
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STRANGER

— Introduction of, into joint family
 See HINDU LAW—JOINT FAMILY—
 POWERS OF ALIENATION BY MEMBERS—
 OTHER MEMBERS

[I L R, 1 All, 429
 I L R, 2 All, 898]

See HINDU LAW—PARTITION—RIGHT TO
 PARTITION—PURCHASER FROM WIDOW
 [18 W R, 23
 I L R, 11 Calc, 580
 I L R, 13 Calc, 209]

STRIDHAN

See CASES UNDER HINDU LAW—STRIDHAN

See HINDU LAW—WIDOW—POWER OF
 WIDOW—POWER OF DISPOSITION OR
 ALIENATION I L R, 1 Mad, 291
 [3 W R, 49, 105
 S W R, 519
 2 Agra, 230
 1 Mad, 85
 5 Mad, 111
 I L R, 2 Mad, 333]

STRIKING OFF EXECUTION PROCEEDINGS

See CASES UNDER ATTACHMENT—STRIKING OFF EXECUTION PROCEEDINGS

See CASES UNDER EXECUTION OF DECREE—STRIKING OFF EXECUTION PROCEEDINGS

See CASES UNDER LIMITATION ACT 1877, ART 179 (1871 ART 167, 1859 s 20)—STEP IN AID OF EXECUTION—STRIKING CASE OFF FILE EFFECT OF

See LIMITATION ACT, 1877 ART 179 (1871, ART 167 1859 s 20)—STEP IN AID OF EXECUTION—SUITS AND OTHER PROCEEDINGS BY DECREE HOLDER
 [I L R, 4 Calc, 877]

SUB LETTING

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITIONS

[2 Agra, Pt II, 202
 W R, 1884, Act X, 31
 I L R, 20 All, 469]

See LANDLORD AND TENANT—TRANSFER BY TENANT I L R, 14 Bom, 384
 [I L R, 15 All, 219, 231]

SUBORDINATE COURT

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—APPEALABLE ORDERS I L R, 11 Calc, 522

See CASES UNDER CRIMINAL PROCEDURE CODE s 437

SUBORDINATE COURT—concluded

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION

[I L R, 22 Calc, 487]

Duty of—Conflict of opinion in High Courts—The lower Courts are bound to follow the concurrent decisions of the Court to which they are subordinate and are not at liberty to adopt a contrary opinion expressed by another High Court KOBAN ALI MIRDHA v SHARODA PROSHAD AICH

[I L R, 10 Calc, 82]

S C KOBAN ALI MIRDHA v PITUMDARI DASI
 [13 C L R, 256]

SUBORDINATE JUDGE, JURISDICTION OF—

See COMPANIES ACT s 180

[I L R, 17 All, 252]

See DEKKAN AGRICULTURISTS RELIEF ACT s 11 I L R, 15 Bom, 30
 [I L R, 16 Bom, 128]

See DEKKAN AGRICULTURISTS RELIEF ACT s 4 I L R, 19 Bom, 46

See DEKKAN AGRICULTURISTS' RELIEF ACT s 15 (d) I L R, 16 Bom, 351

See EXECUTION OF DECREE—TRANSFER OF DECREES FOR EXECUTION AND POWER OF COURT ETC I L R, 18 Bom, 61

See INSOLVENCY—INSOLVENT DEBTORS UNDER CIVIL PROCEDURE CODE

[I L R, 21 Bom, 45]

See PLAINT—RETURN OF PLAINT

[I L R, 20 Bom, 875]

See PROBATE—JURISDICTION IN PROBATE CASES I L R, 25 Calc, 341

See RIGHT OF SUIT—CHARITIES AND TRUSTS I L R, 15 Bom, 148
 [I L R, 21 Bom, 48]

See VALUATION OF SUIT—SUITS

[I L R, 14 Mad, 183
 I L R, 22 Bom, 315]

1. Suit brought to set aside probate—A Subordinate Judge has no jurisdiction to try a suit brought to set aside a probate. *BULDER SURNAN v TARANATH SURNAN* 22 W R, 416

2. Complaint under Mad. Reg IV of 1816, s 35, cl 1.—A Subordinate Judge has jurisdiction to entertain a complaint under cl 1, s 35, of Madras Regulation IV of 1816. *Ponnusami Pillai v Pachai* I L R, 2 Mad, 337, overruled. *POYUSAMI v KRISHNA* [I L R, 6 Mad, 222]

3. Trial of suit for land—Officer appointed in the Sonthal Pergunnahs under s 2 Act XXXVII of 1855—Bengal Civil Courts Act, 1871—Reg III of 1872 s 5.—An officer in the Sonthal Pergunnahs, appointed by the Lieutenant Governor of Bengal under s 2 of Act XXXVII of 1855, although vested with powers of a Subordinate Judge under Act

SUBORDINATE JUDGE, JURISDICTION OF—continued.

VI of 1871, has jurisdiction to try suits in regard to land, etc., where the value of the matter in dispute exceeds the value of Rs. 1,000. *RAM RUNJUN CHUCKERBUTTY v. RAM PHOSAD DASS*. 5 C. L. R., 128

4. ———— **Valuation of suits—Joinder of causes of action** *Civil Procedure Codes (Act VIII of 1859), ss. 8, 6; (Act X of 1877), s. 15—Bengal Civil Courts Act (VI of 1871), s. 19—S. 6 of Act VIII of 1859 (corresponding with s. 15 of Act X of 1877), which provided that "every suit shall be instituted in the Court of the lowest grade competent to try it," did not affect the jurisdiction of a Subordinate Judge to try a suit wherein several causes of action were joined, the cumulative value of which was over Rs. 1,000; notwithstanding that, if separate suits had been brought on these several causes, such suits must have been instituted in the Court of the Munsif. *MASHOOLAH KHAN v. RAM LALL AGURWALLAH**

[I. L. R., 6 Calc., 6

5. ———— **Suit for account—Claim valued at less than Rs. 5,000, but value to be accounted for exceeds that sum.—Quære**—Whether a first class Subordinate Judge has jurisdiction to try a suit for an account where the plaintiff states that the property in the hands of the defendants, in respect of which the account is prayed, exceeds Rs. 5,000, but values the claim at Rs. 100. *MANOHAR GANESH v. BAWA RAMCHARAN DAS*. I. L. R., 2 Bom., 219

6. ———— **Appeal transferred—Bengal Civil Courts Act, 1871—N. W. P. Rent Act, 1881, ss. 206, 207, 208.**—A Subordinate Judge, to whom an appeal is transferred under the Bengal Civil Courts Act (VI of 1871), has not the power to dispose of it in the manner provided by ss. 206, 207, and 208 of the N. W. P. Rent Act, 1881: the District Judge alone has the power to dispose of appeals in that manner. *Ram Parsad v. Rai Kishen*, I. L. R., 6 All., 36, followed. *LODHI SINGH v. ISHRI SINGH*

[I. L. R., 6 All., 295

7. ———— **Appeal transferred—Act XII of 1881, ss. 189, 206, 207, 208.**—The defendant in a suit instituted in a Civil Court set up as a defence that it was cognizable in the Revenue Court. The Court of first instance (Munsif) disallowed this defence, and gave the plaintiff a decree. The defendant appealed to the District Judge, again contending that the suit was cognizable in the Revenue Court. The appeal was transferred by the District Judge to the Court of the Subordinate Judge. The Subordinate Judge dismissed the suit on the ground that it was not cognizable in the Civil Courts, but in the Revenue. Held that, looking to the terms of ss. 189, 206, 207, and 208 of the N. W. P. Rent Act, the District Judge had no power to transfer the appeal to the Subordinate Judge, who had not the power vested in the Appellate Court by s. 208. *RAM PRASAD v. RAI KISHEN*

I. L. R., 6 All., 36

8. ———— **N. W. P. Rent Act (XII of 1881), ss. 93, 206, 207, and 208—Bengal, N. W. P., and Assam Civil Courts Act (XII of 1887), s. 22, cl. 3—Transfer of appeal in a Rent Court suit from the District Judge to the Subordinate**

SUBORDINATE JUDGE, JURISDICTION OF—continued.

Judge—Powers exercisable by the Subordinate Judge.—Cl. (3) of s. 22 of Act XII of 1887 makes ss. 206, 207, and 208 of Act XII of 1881 applicable to appeals in suits within s. 93 of Act XII of 1881 when such appeals have been transferred under s. 22 of Act XII of 1887 by a District Judge to a Subordinate Judge and are being heard by such Subordinate Judge. *NANDAN PRASAD v. CHANGUR*

[I. L. R., 16 All., 363

9. ———— **Appeal referred by District Judge—Bengal Civil Courts Act (VI of 1871), s. 26—Power of review—Civil Procedure Code, 1859, s. 376.**—Where a Subordinate Judge hears and disposes of an appeal referred to him by the District Judge under Act VI of 1871, s. 26, he does so as District Judge, and has therefore by implication the same power of reviewing his judgment as a District Judge has under s. 376, Act VIII of 1859. IN THE MATTER OF SHAMA CHURN BHUTT v. PAYNE & Co.

[18 W. R., 292

10. ———— **Appeal from Munsif after Act XIV of 1869—Assistant Judges in Bombay Presidency.**—A decision passed on appeal from a decision of a Munsif by an Assistant Judge, subsequent to the date on which Act XIV of 1869 came into operation (14th March 1869), and prior to the date on which the Assistant Judges in the Bombay Presidency were invested with appellate powers under the Act (4th April 1869), was not illegal, as the Act did not alter the procedure as regards appeals against decisions passed by Courts constituted under the old regulations, under which the Assistant Judges had power to hear appeals. *SAKHO NARAYAN KHANDALKAR v. NARAYAN BHIKAJI KHANDALKAR*

[6 Bom., A. C., 238

11. ———— **Power to inquire into application for execution of decree against ancestor of Sirdar—Agent for Sirdars.** Where a person's name was entered in red ink in the Dekkan Sirdars' list, indicating that he was entitled only to the rank and precedence of a third class Sirdar, it was held that a Subordinate Judge had jurisdiction to inquire into an application for execution of a decree passed against his ancestor by the Agent for Sirdars in the Dekkan. *MAHARAJ GIR v. ANANDRAV*

[8 Bom., A. C., 25

12. ———— **Mortgage lien above limit of Subordinate Judge's jurisdiction—Attachment.**—One D applied to the subordinate Court of Sasvad for the attachment and sale of certain immovable property in execution of a money-decree, under which the sum of Rs. 1,317-4-9 was due to him from his judgment-debtor. On the attachment of the property, the applicant presented a petition to the Court to the effect that he (applicant) had a mortgage lien on the property for Rs. 10,368, and that it might be sold subject to his lien and possession as mortgagee. The Subordinate Judge raised the question whether he had jurisdiction to entertain the application and inquire into the merits of the alleged mortgage. He was of opinion that he had, and referred the question for the opinion of the High Court, which concurred in

SUBORDINATE JUDGE, JURISDICTION OF—continued

his opinion and answered the question in the affirmative PURSHOTAM SIDHESHWAR v. DHONDU AMBET [I. L. R., 6 Bom., 582]

13 ——— Mortgage lien, Inquiry into—*Collateral inquiry into a mortgage lien on attached property—Insolvency of a judgment debtor*—The plaintiff obtained a decree against N and R for Rs. 11-0 in the first class subordinate Court of Satara and applied for execution against the person of R. When brought before the Court, R applied to be declared an insolvent under s. 314 of the Civil Procedure Code (Act V of 1877). The plaintiff then moved the Court to strike off his application for execution and to send his decree to the second class subordinate Court of Vita for execution. The Satara Court accordingly sent the decree to the Vita Court and granted a certificate to the plaintiff under ss. 223 and 224 of the Civil Procedure Code. The Satara Court also

ing to N and R. Thereupon one V. T. claimed a

14 ——— Subordinate Judge in vested with powers of Small Cause Court—*Civil Procedure Code, 1877 s. 620—Arbitration award*—A subordinate Judge although invested

ordinary pecuniary jurisdiction to receive and file awards of arbitrators under s. 25 of the Civil Procedure Code (Act V of 1877) BALKRISHNA v. LAKSHMAN [I. L. R., 3 Bom., 219]

15 ——— Difference between a Court of Small Causes constituted under Act XI of 1865 and a Court of a Subordinate Judge created with the jurisdiction of a Judge of a Small Cause Court under s. 23 of Act XIV of 1869—*Transfer of decree for execution—Act VI of 1867 s. 20—Code of Civil Procedure (Act XIV of 1892), s. 223—Act XIV of 1869, s. 29*—The Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under s. 29 of Act XIV of 1869 do not thereby be-

SUBORDINATE JUDGE, JURISDICTION OF—continued

come 'Courts of Small Causes constituted under Act XI of 1865.' They merely exercise a similar jurisdiction. This makes their decisions final in the cases to which the jurisdiction extends but it does not imply that the variations of procedure prescribed expressly for the Courts constituted under Act XI of 1865 are applicable to Courts constituted under a different Act and subject to different conditions. The Court of a Subordinate Judge exercising Small Cause Court powers under s. 20 of the Code of Civil Procedure (Act XIV of 1892) one of the other Courts exercising jurisdiction of a Court of Small Causes and as such its procedure is governed by the Civil Procedure Code with all the variations provided by Act XI of 1865. Under s. 223 (d) of the Civil Procedure Code the Court which has passed a decree in its Small Cause Court jurisdiction

branches or sides of the Subordinate Judge's Court may be regarded as different Courts BHAGVAN DATALJI v. BALU [I. L. R., 6 Bom., 230]

16 ——— *Suit for interest due on a mortgage*—The plaintiff sued to recover

rupees and that the mortgage debt had been paid off. The suit was tried before a Subordinate Judge in his capacity of a Judge of a Court of Small Causes who held that he had no jurisdiction to go into the

PETHE v. GANPATRAY DAMODAR [I. L. R., 19 Bom., 87]

17. ——— *Civil Procedure Code (Act XIV of 1892) s. 290—Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction Rateable distribution of assets*—Certain moveable property

tion of a money-decree passed in his favour by the same Subordinate Judge in his Small Cause jurisdiction the pro. held that a Sub. of 1869, s. 29 with omis. Cause, well, acquires the jurisdiction of two Courts he does not become the Judge

SUBORDINATE JUDGE, JURISDICTION OF—continued.

of two Courts, but remains the Judge of a Subordinate Court. **MAHARI v. NARSO KRISHNA**
[I. L. R., 9 Bom., 174]

18. — — — — — *Execution of decree—Transfer of decree for execution—Act XI of 1865, s. 20—Act XIV of 1869, s. 28.*—The plaintiff, having obtained a money-decree against H and others in a suit in the Subordinate Judge's Court at Dhulia, applied for execution by attachment and sale of their immoveable property. That property was accordingly sold, but before the realization of the assets the defendant, who also had obtained a money-decree against the same judgment-debtors in the same Court in its Small Cause jurisdiction, applied for the execution of his decree by attachment and sale of the immoveable property which had already been attached at the instance of the plaintiff. The Court, under s. 205 of the Civil Procedure Code (Act XIV of 1882), ratably distributed the proceeds of the sale between the plaintiff and the defendant. The plaintiff now brought this suit in the Small Cause jurisdiction of the Subordinate Judge's Court at Dhulia to recover from the defendant the amount paid to him, alleging that it had been illegally paid, as the procedure laid down in s. 223 of the Code had not been followed. *Held* that, as ruled in *Bhagavan Dayalji v. Balu, I. L. R., 8 Bom., 230*, a Subordinate Judge invested with Small Cause Court powers has generally to follow the procedure prescribed in the Code of Civil Procedure. This governs his proceedings both in trial and execution, whether the suit is a Small Cause suit or not. If the two jurisdictions assigned to the Subordinate Judge's Court and to the Subordinate Judge personally are locally co-extensive, there is no distinction of sides or branches. But where, as in some cases, the ordinary jurisdiction is wider locally than the Small Cause jurisdiction, the Court is, in that part of its territory which lies outside the Small Cause Court jurisdiction, to be regarded as a separate Court so far that a decree in a Small Cause should not generally be executed on property beyond the Small Cause jurisdiction without a transfer, i.e., a dealing with the execution as in a suit tried in the usual way for reasons to be recorded in writing. As all is done by the same Judge, a suggestion and an order recorded in the case are sufficient without a formal transmission as to a distant Court. **DHARAMDAS SANTIDAS v. VAMAN GOVIND**
[I. L. R., 9 Bom., 237]

19. — — — — — *Civil Procedure Code (Act XIV of 1882), s. 111—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Practice.*—In a suit brought by the plaintiff to recover Rs 36-7-9 from the defendant, under the Small Cause jurisdiction of a Subordinate Judge, the defendant claimed to set off Rs 72, which exceeded the pecuniary jurisdiction of the Judge as a Small Cause Judge. On reference to the High Court,—*Held* that the set-off might be pleaded by the defendant. The Judge would exercise his Small Cause Court jurisdiction in trying the claim of the plaintiff and his ordinary jurisdiction in trying the set-off. **RAMPRATAP v. GANESH RANGANATH**
[I. L. R., 12 Bom., 31]

SUBORDINATE JUDGE, JURISDICTION OF—continued.

20. — — — — — *Appeal—Suit cognizable by a Court of Small Causes—Act XI of 1865, ss. 2, 6, 12, 21—Bombay Civil Courts Act (XIV of 1869), s. 28—Final decision.*—The plaintiff sued to recover Rs 5 as damages for the wrongful removal of a tree. The suit was filed in the Court of a second class Subordinate Judge, who was invested, under Act XIV of 1869, s. 28, with the jurisdiction of a Judge of a Court of Small Causes. The case, which was in itself of the nature of a Small Cause, was, however, tried as an ordinary suit according to the rules of the Civil Procedure Code. The Subordinate Judge rejected the plaintiff's claim. An appeal was made to the District Court, which reversed the Subordinate Judge's decree, and awarded the claim. *Held* that, the suit having really been a Small Cause, no appeal lay to the District Court, though the Subordinate Judge did not use the procedure of Act XI of 1865. Having the Small Cause Court jurisdiction, the Subordinate Judge must be taken to have dealt with the case under that jurisdiction, even if he was not quite alive to it at the time. A suit taken cognizance of under s. 2, 6, or 12 of the Mofussil Small Cause Court Act (XI of 1865) does not cease to be a suit tried under the Act, because of some divergence from its summary procedure. A surplusage of form and elaborateness does not change the character of the decision for the purpose of its finality. S. 28 of the Bombay Civil Courts Act (XIV of 1869) does not, when jurisdiction is given under it, necessarily divide the Court into two separate Courts; but still it creates an additional and distinct jurisdiction. Since Act IX of 1887 came into force, the Court is to be regarded as two Courts in such cases. **PITAMBER VAJIRSHET v. DHONDU NAVLAPA**
[I. L. R., 12 Bom., 486]

21. — — — — — *Suit against Trustee—Person collecting or receiving subscriptions for building a temple—Civil Procedure Code (Act XIV of 1882), s. 30.*—A person collecting and receiving subscriptions for the purpose of building a temple, in pursuance of a resolution come to at a meeting of the community, holds them in the capacity of a trustee, and a suit in respect thereof should be filed, under s. 30 of the Civil Procedure Code (Act XIV of 1882), in a Subordinate Judge's Court, and not in a Small Cause Court. **MAHOMED NATHUBHAI v. HUSEN** . I. L. R., 22 Bom., 729

22. — — — — — *Power of Subordinate Judge to try Munsif's case—Act XVI of 1868, ss. 13, 15, 16—Bengal Civil Courts Act (VI of 1871), ss. 19, 20—Civil Procedure Code, ss. 15, 578.—Per PETHERAM, C.J., and BRODHURST, MAHMOOD, and DUTHOIT, JJ.*—The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to Rs 1,000. *Per PETHERAM, C.J.*—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the

SUBORDINATE JUDGE, JURISDICTION OF—continued

Courts The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it. The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits. Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure. The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it. If it does not wish to try the suit it may refuse to entertain it. If it wishes to retain the suit in its Court, it may do so, it is not bound to refuse to entertain it. *PER DUTHOIT, J.*—The words in s 57 of the Civil Procedure Code "shall be" are an instruction which the Court is bound to follow, and they are therefore a restraint upon jurisdiction. The effect therefore, of the concurrent jurisdiction

JJ s 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction, and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades. *Kasrick C. under Mohunt v Ram Lall Shaha, 22 W R, 301, and Sufestoolah Syer v Begum Bibes, 20 W R, 219, followed. PER OLDFIELD J.*—S 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on s 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognizable by the Civil Court, subject in its exercise to a certain procedure, namely, that the suits be instituted in the Court of the lowest grade competent to try them. *Held, therefore, by PETERHAM C.J., and OLDFIELD BRODTHURST, and MAHMOOD, JJ.,* where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade might have tried, that the Subordinate Judge had not acted without jurisdiction. The point in which suit had been in the first instance presented to the Munsif, who had returned it to be presented to the Subordinate Judge. *PER DUTHOIT, J.* The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised. This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be treated as a direction only. Under the circumstances, therefore, the District Judge had, in appeal, correctly refused to entertain the plea of defect in jurisdiction. *NIGHT LAL v MAZHAR HUSAIN*

[I L R., 7 All., 230]

23 *Civil Procedure Code (Act XIV of 1852), s 15—Munsif, Jurisdiction of* s 15 of the Civil Procedure Code does not preclude a Subordinate Judge from trying a suit within the jurisdiction of the Munsif's Court.

SUBORDINATE JUDGE, JURISDICTION OF—continued.

Ledgard v Bull, L R, 13 I A, 134, distinguished. MATRA MONDAL v HARI MOHAN MULLICK

[I L R., 17 Calc., 155]

See AUGUSTINE v MEDLYCOTT

[I L R., 15 Mad., 241]

24 *Bengal Civil Courts Act (VI of 1871), s 18—Sale in execution of decrees—Local limits of jurisdiction—*

can only exercise jurisdiction within such local limits. *Obhay Churn Coondoo v Golam Ali, I L R., 7 Calc., 410, and Irem Chand Day v Mokkoda Debi, I L R., 17 Calc., 699, followed. DAKHINA CHURN CHATTOPADHYA v BILASH CHUNDER ROY*

[I L R., 18 Calc., 528]

25. *Concurrent jurisdiction with District Munsif—Suit of less than Rs 500 in value. Quare—Whether a Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than Rs 500 in value. Matra Mondal v Hari Mohan Mullick, I L R., 17 Calc., 105 and Nidhi Lal v Mazhar Hussain I L R., 7 All., 230, followed. KRISHNASAMI v KANAKASABAI*

[I L R., 14 Mad., 183]

26. *Bombay Civil Courts Act (XIV of 1869), s 28—Provincial Small Cause Courts Act (IX of 1857), s 83—Judge exercising Small Cause Court jurisdiction—* S 33 of Act IX of 1887 precludes a Subordinate Judge invested with Small Cause Court powers under s 28 of Act XIV of 1869 from entertaining a counter claim beyond the pecuniary limits of his Small Cause Court jurisdiction. *BAROTE GAGA PARSHOTAM v PANJU RAMJAN*

[I L R., 14 Bom., 371]

27. *Bengal, N.W.P., and Assam Civil Courts Act (XII of 1857), s 13, cl 2—District Judge Power of—Transfer of property Act (IV of 1852), ss 83, 90—Sale in execution of mortgage decrees—Execution of decrees—When Subordinate Judges are appointed by the Local Government with jurisdiction over the whole of a district, the District Judge is not competent, under s 13 (2) of the Bengal N.W.P. and Assam Civil Courts Act, to assign to them different areas so as to limit or define their respective jurisdictions.*

thereof, even when the execution is sought by the sale of property other than the mortgaged property lying within the district, but outside the area assigned to it by the District Judge. *BACHH KHER v GOJAN BHAND*

[I L R., 27 Calc., 272]

28 *Transfer to Subordinate Judge of appeal petition heard by and pending before District Judge Jurisdiction of Subordinate Judge to hear and determine the appeal*

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

—*Waiver of objection to jurisdiction, Effect of, when Court has no inherent jurisdiction.*—An appeal, having been entered in a District Court against the decision of a District Munsif, was heard in part by the District Judge, who remanded the suit to the District Munsif for findings on fresh issues. Findings having been duly returned, the District Judge transferred the appeal to the Subordinate Judge, who heard and determined it. *Held* that the District Judge had no power to transfer to a Subordinate Judge an appeal which was part heard and pending before him. The only inherent jurisdiction that a Subordinate Judge has is in original suits under s. 12 of the Civil Courts Act. In appeals he only acquires jurisdiction under the last clause of s. 13 of the said Act, which enables a District Judge to transfer appeals to him, and, unless that section is complied with, the Subordinate Judge has no jurisdiction to hear or determine any appeal. S. 13 does not authorize the transfer to a Subordinate Judge of an appeal part heard and pending before the District Judge. The fact that objection was not taken to the jurisdiction of the Subordinate Judge did not confer jurisdiction upon him, the Subordinate Court not having inherent jurisdiction. KUMARASAMI REDDIAR v. SUBBARAYA REDDIAR

[I. L. R., 23 Mad., 314]

29. ———— *Act XIV of 1869, ss. 23 and 24—Subordinate Judge appointed to assist another Subordinate Judge, Powers of.*—Where a Subordinate Judge is deputed, under s. 23 of Act XIV, of 1869, to assist another Subordinate Judge, the assistance by the Judge so deputed can only be afforded within the limits of his jurisdiction as fixed by s. 24 of the Act, and cannot be invoked, except in matters within his competence. The plaintiff, having obtained a decree against the defendant in a suit in which the subject-matter of the suit and the amount of the decree exceeded Rs. 5,000 in the Court of a Subordinate Judge of the first class, presented it in that Court for execution. The Subordinate Judge transferred it for execution to the second class Subordinate Judge who had been appointed, under Act XIV of 1869, to assist him, and whose jurisdiction extended to Rs. 5,000 only. The second class Subordinate Judge ordered execution to issue. The defendant appealed, and this order was reversed. The plaintiff appealed to the High Court, and raised, for the first time, an objection that the second class Subordinate Judge had no jurisdiction to entertain the application for execution. The defendant contended that this objection was taken too late on second appeal. *Held* that the second class Subordinate Judge has no jurisdiction to entertain and deal with the plaintiff's application for execution, and that the plaintiff's objection should be allowed. An objection to the jurisdiction, the validity of which is patent on the face of the proceedings, can be taken at any stage of the proceedings. SIVNESH-WAR PANDIT v. HAKIHAR PANDIT

[I. L. R., 12 Bom., 155]

30. ———— *Malicious prosecution — Suit against a Mamlatdar for*

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

malicious prosecution undertaken by him at the instance of his superior officer, to clear his character—Subordinate Judge, Power of, to try such suit.—The defendant, who was a Mamlatdar, was required by his superior officer to clear his character from certain charges of bribery which had been brought against him in an anonymous letter, and he accordingly prosecuted the plaintiffs whom he suspected of having written the letter. The plaintiffs were convicted and sentenced by a Magistrate, but on appeal were acquitted by the Sessions Judge. The plaintiffs thereupon brought this suit in a Subordinate Judge's Court to recover damages from the defendant for malicious prosecution. The jurisdiction of the Subordinate Judge to try the suit being questioned, he referred the case to the High Court. *Held* that the Subordinate Judge had jurisdiction to try the suit. The defendant was sued in his individual, and not in his official, capacity; and the fact that he was a Mamlatdar when he prosecuted the plaintiffs could not affect the character in which he was sued. BANKAT HARGOVIND v. NARAYAN VAMAN DEVBHANKAR

I. L. R., 11 Bom., 370

31. ———— *Malicious prosecution — Prosecution, when official — Bombay Civil Courts Act (XIV of 1869), s. 32—Bombay Act X of 1876, s. 15—Prosecution instituted by order of superior officer.*—An officer of Government who prosecutes for an injury personal to himself is not generally acting in his official capacity as prosecutor. If any particular class of interests is placed specifically under his tutelage, with a direction to guard them by the appropriate legal proceedings, suits instituted in the fulfilment of the duty thus assigned to the functionary are of course instituted in his official capacity. A similar remark applies to criminal proceedings. A prosecution by a functionary is official when in carrying it on he is discharging a duty expressly or impliedly assigned to him by law. If the duty of prosecuting in any particular case is not assigned to an officer as such, the consent or the order of his superior will not make the act an official one which in its nature is not so, as lying outside his official functions. The defendant was a forest officer in the service of Government. He prosecuted a certain person for theft in the Magistrate's Court at Sirsi. The accused was defended by the plaintiff, who was a pleader. During the hearing of the case the defendant in open Court made use of certain expressions towards the plaintiff, which it was alleged were defamatory, and were calculated to lower him in the estimation of the public, to injure his reputation, and to mar his professional prospects. The plaintiff sent him a notice claiming Rs. 4,500 as damages for the injury done to him by the defendant. The defendant thereupon lodged a complaint before the District Magistrate at Sirsi, charging the plaintiff under s. 189 of the Penal Code, with holding out a threat, etc., to a public servant for the purpose of inducing him to refrain from doing his duty as such public servant. The Magistrate dismissed the charge, and the plaintiff then filed the present suit against the defendant for malicious prosecution. The defendant

SUBORDINATE JUDGE, JURISDICTION OF—continued

pleaded that in lodging the complaint against the defendant he had acted in his official capacity and under the orders of his superior officer with reasonable and probable cause and not maliciously, that the suit was brought with reference to an act done by him in his official capacity as forest officer, and that therefore the Court of the Subordinate Judge had no jurisdiction. The Subordinate Judge held that he had no jurisdiction, being of opinion that the defendant had prosecuted the plaintiff in his character as a public servant, and that therefore the present suit against the defendant was one in which an officer of Government in his official capacity was a defendant, and as such was cognizable by the District Judge only, under s 31 of the Bombay Civil Courts Act (XIV of 1869). He therefore dismissed the suit. On appeal, the Acting District Judge was also of opinion that the Subordinate Judge had no jurisdiction, but he held that the Subordinate Judge was wrong in dismissing the suit instead of returning the plaintiff's presentation to the District Court. He therefore reversed the decree of the Subordinate Judge and referred the plaintiff to the District Judge. On appeal by the plaintiff, —Held by the High Court that the defendant was sued as a private person for an alleged wrong to the plaintiff, and that the suit was rightly brought in the Court of the Subordinate Judge. The order appealed from was therefore reversed and the District Judge was directed to dispose of the appeal on its merits. **GOPI MAHA BLESVAR BHAT v. SHESO MANJI**

[I L R., 12 Bom., 358]

32 ——— *Suit against Collector—Act done in official capacity—Bombay Revenue Jurisdiction Act (X of 1876), s 15*—The plaintiff sued the Collector of Dharwar and his clerks for having destroyed certain certificates of efficiency which had been given to him by Mamlatdars in whose service he had been employed. The defendants pleaded that the certificates had been destroyed because they were not issued by the Mamlatdars in proper form. Held that the act of the defendants was an act done by them in their official capacity, and that the Subordinate Judge could not entertain the suit. **SWAVIRATACHARYA v. COLLECTOR OF DHARWAR**

I L R., 16 Bom., 441

33 ——— *Bombay Civil Courts Act (XIV of 1869), s 32, as amended by the Bombay Revenue Jurisdiction Act (X of 1876) s. 15, and by Bom Act XV of 1880, s 3—Bom Reg II of 1877, s 43—Suit against officer of Government—Acts done by the defendant in his official capacity—Civil Procedure Code (1852), s 421*—On the death of the talukdar of

property of the deceased, and locked up some of the rooms. Among the property seized (it was alleged) was certain property belonging to the widow. She brought this suit against the Collector and Mamlatdar claiming damages for these wrongful acts.

SUBORDINATE JUDGE, JURISDICTION OF—continued

The suit was filed in the Court of the Subordinate Judge. Held that the acts complained of were done by the defendants in their official capacity, and that under s 32 of the Bombay Civil Courts Act (XIV of 1869) the Subordinate Judge had no jurisdiction to entertain the suit. **ALLEN v. BAI SHRI DARIANA**

[I L R., 21 Bom., 754]

34 ——— *Patil and kul-karni of village—Impressment of bullocks by patil and kul-karni of village for use of Government officer—Suit for damages for acts done by officer of Government in official capacity—Bombay Revenue Jurisdiction Act (X of 1876), s 15—Bombay Civil Courts Act (XIV of 1869), s 32—Bom Reg IV of 1818, s 52*—The patil and kul-karni of a village having impressed a pair of bullocks belonging to the plaintiff for the use of an abkari inspector the plaintiff sued them for damages in the Court of a Subordinate Judge. The defendants pleaded (*inter alia*) that the Subordinate Judge had no jurisdiction to try the suit under the Bombay Revenue Jurisdiction Act (X of 1876). Held that the suit was properly instituted in the Court of the Subordinate Judge as the defendants were sued in their private capacity. It is not clear that the rules about impressment of carts found in Ch I of Narn's Revenue Hand book actually order village patils to impress carts against the owner's will. Neither it is clear what officers are to be supplied. There is nothing to show that any law ever imposed this duty on a kul-karni, or that provision was made after the repeal of the Regulation of 1818 as regards patils except for military bodies. **BUDHO v. KESHO**

[I L R., 21 Bom., 773]

35. ——— *Money lent to public officer—Money lent to him in his official capacity—Bombay Civil Courts Act (XIV of 1869), s 32*—The plaintiff had contracted to supply materials requisite for a public building. The defendant was the Supervisor Public Works Department in charge of the works. From time

purpose of the work of which he may be in charge, or any way to pledge the credit of Government the mere statement of the defendant when he borrowed the money is that he wanted them to pay the labourers was not in the circumstances enough to show that the defendant borrowed them in his official capacity, and that the Subordinate Judge had authority to entertain the suit in respect of them. In claims arising out of contract the same test must be applied to determine the question of jurisdiction as in those having their origin in tort viz., was the loan

5. Right of debtor to discharge

—*Omission to make order for allowance* Civil Procedure Code, 1859, ss 276, 278. A debtor, having been imprisoned on a writ of *ce* *as*, was brought up on a *habere corpus*, and applied for his discharge on the ground that his arrest and imprisonment were illegal, as no order for his allowance under s 276 of Act VIII of 1859 had been made. Subsequent to the arrest, however, he was kept amply supplied with *Meid* that s 276 and 278 of Act VIII of 1859 applied as much to the execution of a writ of *ce* *as* as to an arrest by writ of the High Court, that no one is to be imprisoned in execution of a decree unless subsistence money for a month in advance be paid to the person to whose custody he is committed, that a similar payment must be received in advance every successive month pending the imprisonment, that if any such payment be not made, the prisoner is entitled to be released, that the "allowance" referred to in s 276 of Act VIII of 1859 meant subsistence money of 4 annas per diem, that s 276 of Act VIII of 1859 enacted only that the prisoner shall have an allowance of 4 annas per diem paid monthly unless the Court shall specially order a less amount, that an order for an allowance to the prisoner was not necessary, and was included only as a relief to the execution creditor, that the omission to have such order made did not render the arrest and imprisonment illegal, that in the absence of such order, s 276 of Act VIII of 1859 ensured 4 annas a day as subsistence money for the prisoner.

404 Aya Khan v. Jorjodas Penavat
[Bourke, O. C., 52]

8. Non-payment of subsistence money in advance—Civil Procedure Code, 1859, s 276.—The monthly subsistence money under s 276 of Act VIII of 1859 was to be paid in advance, therefore, where a debtor was arrested and subsistence money paid for January, but no further deposit was made till 4th February, the prisoner was held entitled to his discharge. [By no Court.]

7. Application for discharge on non-payment of subsistence money.—*Petition for discharge—Civil Procedure Code, 1859, s. 278*—A prisoner was arrested on the 30th of December on a *ce* *as* dated the 24th of December, on which day the execution creditor paid subsistence money.

Act VIII of 1859, and that on failure of subsistence-money the prisoner should be released, and further must be paid in advance by the execution creditor.

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defection of him by the person in whose custody he was illegal. [Bourke, O. C., 38]

8. Non-payment of subsistence money in advance—Act VIII of 1859, s 276, 278.—A prisoner was arrested on August 4th, and committed to prison on the evening of the same day. Before his commitment, the execution creditor paid into the hands of the jailor a sum sufficient for his subsistence money for twenty-seven days, at the established rate of 4 annas per day. On the 5th of August a writ of *habere corpus* was applied for to bring the prisoner up, and on the 6th a further sum of 4 annas was paid to the jailor to cover any deficiency in the former payment. *Meid* that the requirement of s 276, Act VIII of 1859, had not been fulfilled and that the prisoner was entitled to his discharge under s 276. [Bourke, O. C., 38]

9. Mode of payment of subsistence money.—On the 30th of September, the plaintiff, a detaining creditor paid to the jailor for a prisoner confined at the suit of the plaintiff, the jailor then made a balance of 4 annas over from the subsistence money for defendant. *Meid* that there was a sufficient compliance with s 276 of Act VIII of 1859. [Bourke, O. C., 38]

10. Release on subsistence-money.—*Release at request of creditor—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

11. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

12. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

13. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

14. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

15. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

16. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

17. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

18. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

19. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

20. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

21. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

22. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

23. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

24. Effect of discharge of debtor.—*Non-payment of subsistence money—Bom. Act IV of 1866* Where the defendants were arrested through the plaintiff's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the plaintiff's hands for a refund of the balance of subsistence money paid to the jailor. [Bourke, O. C., 38]

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[I. Ind. Jur., N. S., 290

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[I. L. R., 2 Bom., 75

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[I. L. R., 21 Cal., 997

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[I. L. R., 19 Bom., 680

Deed altering course of, by

Hindu law.

See COMPROMISE—CONSTRUCTION, ENFORCING, DEEDS OF, AND SETTING ASIDE DEEDS OF COMPROMISE.

[6 B. L. R., 202

18 Moore's I. A., 497

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See BENGAL TENANCY ACT, s. 16.

[I. L. R., 24 Cal., 241

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[11 B. L. R., 244

14 Moore's I. A., 367

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See CONVEYERS . . . I. L. R., 10 Mad., 69

[I. L. R., 20 Bom., 53

ss. 2 and 3—Minor.—The definitions of "minor" and "minority" in the Succession Act do not apply to cases in which a person enters into a con-

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tract on his own behalf, and not in any representative character under that Act. SUTAN CHAND v. SATTU . . . 12 B. L. R., 358; 21 W. R., 221

B. 4.

See DIVORCE ACT, s. 35.

[5 B. L. R., Ap., 8

I. L. R., 5 Cal., 357

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[8 B. L. R., 372

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Operation of section—

Rights acquired before passing of Act.—The provisions of s. 4 of the Succession Act are prospective, and leave rights unaffected which had already been acquired before the Act passed. SAKKIS v. PHOSKOROSS DOSSRE

[I. L. R., 6 Cal., 794; 8 C. L. R., 76

2. . . Married woman, Liability of—Separate estate—Restraint on anticipation—Husband and wife—Married Women's Property Act (III of 1874), s. 8.—In a suit against a husband and wife, and the trustees of the wife's marriage settlement on two joint and several promissory notes given by the husband and wife after their marriage, but before the passing of the Married Women's Property Act (III of 1874), the plaintiff sought to render liable property settled on the marriage upon the wife for her separate use without power of anticipation. The marriage was contracted after the passing of the Succession Act. Held that s. 4 of that Act did not prevent the operation of the clause in the marriage settlement in restraint of anticipation. Held further that s. 8 of the Married Women's Property Act, 1874, does not apply to contracts made before the passing of the Act. Semble, per COUCH, C.J.—If the contract had been made after that Act came into operation, the plaintiff would have had a remedy against the wife's separate estate, notwithstanding the clause restraining anticipation. PETERS v. MANUK . . . 13 B. L. R., 383; 22 W. R., 175

3. . . Husband and wife—Parties with English domicile married in India—Succession to moveable property.—H. M., a British subject having his domicile in England, married in Calcutta, in April 1866, C, a widow, who at the time of the marriage had also an English domicile. C, after her marriage with H. M., became entitled as next of kin to shares in the moveable properties of her two sons by her former marriage: these shares were not realized nor reduced into possession by C during her life. C died in 1872, leaving her husband, but no lineal descendants. In March 1874 H. M. filed his petition in the Insolvent Court, and all his property vested in the Official Assignee. In April 1875 letters of administration of the estate and effects of C were, with the consent of H. M., granted to the administrator-General of Bengal, by whom the shares to which C became entitled as next of kin of her sons were realized. In a special case for the opinion of the Court under Ch. VII, Act

—continued.

—continued.

s. 75

See WILL—CONSTRUCTION

[I. L. R., 6 AU, 683

s. 82

See HINDU LAW—WILL—CONSTRUCTION OR

OF WILLS—ESTATES ABSOLUTE OR

LIMITED

[I. L. R., 24 Cal, 646

[I. L. R., 23 Bom, 833

s. 91.

See WILL—CONSTRUCTION

[I. L. R., 6 AU, 683

= 98—Hindu Will Act (XXI of

1870), ss. 2, 3—Lapsed legacy—Lapse of gift to

testator's immediate descendant—Probate and Ad

ministration Act (I of 1881) s. 131—A testator,

by his will, dated the 22nd April 1878, gave a legacy

of Rs 500 to his son's daughter J, to be paid to her

out of a certain sum owing to the testator by the

Rajah of Bettur. The testator died on the 2nd

February 1881, and J in October 1879, the money

due by the Rajah of Bettur was realized on the 7th

December 1884. J left an only child D, who was

born before the death of the testator. D sued to

recover the legacy left to her mother, the defence

was that the legacy had lapsed. Held that J was,

in point of law, within the meaning of s. 90 of the

Succession Act, a person in existence at the death of

the testator, because a legal descendant of hers

survived the testator. See *Lal Mahata v*

Binda Bim

s. 98.

See HINDU LAW—WILL—CONSTRUCTION

OR WILLS—FRAUDULENT, TRUSTS, DE

QUESTIONS TO A CLASS, AND REMOTENESS.

[I. L. R., 8 Cal, 637

[I. L. R., 16 Bom, 653

[I. L. R., 16 Bom, 492

See WILL—CONSTRUCTION

[I. L. R., 4 Cal, 670

Application of section—

Semble—s. 98 of the Succession

Act applies only to testate intestates. *Massie v*

Knobbs

ss. 98—103.

See (ASSETS UNDER HINDU LAW—WILL—

CONSTRUCTION OR WILLS—FRAUDULENT—

TRUSTS, TRUSTS, TRUSTS TO A CLASS,

AND REMOTENESS.

s. 101

See FRAUDULENT, TRUSTS, TRUSTS TO A CLASS,

[I. L. R., 20 Bom, 511

ss. 101, 102.

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[I. L. R., 4 Cal, 304

s. 105.

See WILL—CONSTRUCTION

[I. L. R., 15 Mad, 448

estate of H. M., was entitled to the whole fund

realized by such shares in the hands of the Adminis

[I. L. R., 1 Cal, 412

4

—Marriage—Husband and

wife—Domestic Succession to property—A per

son with an English domicile marrying a wife with

an Indian domicile is, on her death, entitled to

inherit the whole of her movable property, to

the exclusion of the next of kin. See s. 4 and 41

of the Succession Act.

[I. L. R., 1 Cal, 412

General or Special. I. L. R., 23 Cal, 506

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See FOREIGN STATES

[I. L. R., 11 Cal, 17

and s. 10.

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[I. L. R., 4 Cal, 106

s. 36

See COVENANTS

[I. L. R., 11 Mad, 466

s. 42.

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[I. L. R., 2 Bom, 75

ss. 48, 54.

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[I. L. R., 7 Mad, 515

s. 50.

See CASES UNDER WILL—ATTESTATION

See CASES UNDER WILL—SIGNATURE

s. 54

See WILL—CONSTRUCTION

[I. L. R., 4 Mad, 244

66—Revocation of will—*Laurel*

polygamous marriage—The will of a Jew, made

subsequently to his first marriage, but previously to

a second marriage in the lifetime of his first wife,

held to be revoked by such second marriage under

s. 50 of the Succession Act. *Garnier v. Mondavi*

[I. L. R., 1 Cal, 148

s. 68

See WILL—ATTESTATION

[I. C. W. N., 428

See WILL—CONSTRUCTION

[I. L. R., 15 Mad, 448

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See PROBATE—TO WHOM GRANTED.
[7 B. L. R., 563
I. L. R., 15 Mad., 360
s. 187.
See CERTIFICATE OF ADMINISTRATION—
EFFECT OF CREDITORS.
[23 W. R., 252
See PROBATE—JURISDICTION IN PROBATE
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See REPRESENTATIVE OF DECEASED
PERSON . I. L. R., 14 Mad., 454
See VENDOR AND PURCHASER—TITLE.
[I. L. R., 15 Bom., 657
s. 187, 188.
See PROBATE—OPPOSITION TO, AND REVO-
CATION OR, GRANT.
[I. L. R., 4 Cal., 360
I. L. R., 17 Cal., 272
s. 190.
See RIGHT OF SUE—INTERSTACY.
[I. L. R., 18 Bom., 337
ss. 190, 191—Intestate—Sale of pro-
perty of intestate in execution of decree against some
of his heirs—Title to sale-proceeds—Letters of
administration.—Sued some of the heirs to a
person governed by the Succession Act, 1865, who
died intestate, such heirs being in possession of a part
of the estate of the deceased, for a debt due to him
by the deceased, and obtained a decree against such
persons. In execution of this decree, property
belonging to the deceased was sold. Before the sale-
proceeds were paid to S, K, an heir to the deceased,
obtained in the District Court letters of administration
to the estate of the deceased, and an order for
payment to her of such sale-proceeds. Whereupon
S sued K for such sale-proceeds and to have the
District Court's order directing payment thereof to
her set aside. Held that, with reference to ss. 190
and 191 of the Succession Act, 1865, the decree
obtained by S against persons who did not legally
represent the estate of the deceased, and the proceed-
ings taken against such persons in execution of such
decree, gave S no title to the sale-proceeds which
formed part of the estate of the deceased, and the
suit was therefore not maintainable. SURIN NARAYAN
v. KENNION . I. L. R., 4 All., 193

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See CASES UNDER LETTERS OF ADMINIS-
TRATION.
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PROBATE . I. L. R., 4 Cal., 582

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s. 106.
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[I. L. R., 6 All., 583
s. 111.
See CASES UNDER HINDU LAW—WILL—
CONSTRUCTION OF WILLS—ESTATES AB-
SOLUTE OR LIMITED.
See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—SURVIVORSHIP.
[I. L. R., 23 Cal., 563
I. L. R., 23 I. A., 18
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[3 C. W. N., 478
s. 114.
See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—REQUEST FOR INFORMAL CON-
SIDERATION . I. L. R., 23 Mad., 613
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OF WILLS—ESTATES ABSOLUTE OR
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[I. L. R., 22 Bom., 774
s. 128—Legacy to person appointed
executor—Rebuttal of presumption—Parol evidence
—Hindu Will, Act (XXI of 1870), s. 2.—The
language of s. 128 of the Succession Act is peremp-
tory and leaves no room for a presumption, and it is
not left to the Court to decide whether the legacy is
given to the person in his character as executor or not.
The rule as to the admissibility of parol evidence
to rebut the presumption, which may possibly upon
the decisions obtain in England, has no force in this
country where such evidence is inadmissible. PRO-
SONO COOLAH GHOSH v. ADMINISTRATOR-GENERAL
OF BENGAL . I. L. R., 15 Cal., 83
s. 159.
See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—PERPETUITIES, TRUSTS, RE-
QUESTS TO A CLASS, AND REMOTENESS.
[I. L. R., 20 Bom., 450
See WILL—CONSTRUCTION.
[I. L. R., 15 Mad., 448
s. 179.
See PARTIES—PARTIES TO SUITS—EXE-
CUTORS . I. L. R., 12 Bom., 621
See PROBATE—POWER OF HIGH COURT
TO GRANT, AND FORM OF . I. L. R., 6 Bom., 460
ss. 179—187.
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258—Grant of letters of administration with will annexed—Practice—Letters of administration with the will annexed may under the expiration of seven clear days from the death of the testator in the goods of Wilson
[I. L. R., 1 Cal., 149]

261. See PROBATE—Application for Probate, 458

263. See PROBATE—CERTIFICATE OF ADMIRALTY, 245

264. See APPEAL—Probate

265. See REFERENCE TO HIGH COURT—CIVIL CASES

266. See APPEAL—Probate

267. See APPEAL—Probate

268. See APPEAL—Probate

269. See APPEAL—Probate

270. See APPEAL—Probate

271. See APPEAL—Probate

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274. See APPEAL—Probate

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284. See APPEAL—Probate

285. See APPEAL—Probate

286. See APPEAL—Probate

287. See APPEAL—Probate

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288. See APPEAL—Probate

289. See APPEAL—Probate

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291. See APPEAL—Probate

292. See APPEAL—Probate

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310. See APPEAL—Probate

311. See APPEAL—Probate

312. See APPEAL—Probate

313. See APPEAL—Probate

314. See APPEAL—Probate

315. See APPEAL—Probate

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were granted to the Administrator-General of Bengal. The decree-holder applied for execution of his decree against the assets in the hands of the Administrator-General. Held that he was entitled to have his decree satisfied out of the assets of the deceased, although those assets were not sufficient to pay in full all the claims made against the estate. *REVERT* v. DE PENNING . I. L. R., 10 Cal., 929

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See ADMINISTRATOR 8 Bom., O. C., 20

s. 331.

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF.

[I. L. R., 6 Bom., 452

See WILL—FORM OF WILL.

[2 B. L. R., A. C., 79

1. "Jains"—"Hindu."—The term

"Hindu" in s. 331 of Act X of 1865 means and includes a "Jain," and consequently in matters of succession, Jains are not governed by that Act. *BAOBERBI v. MAKHAN LAL* . I. L. R., 3 All., 55

2.

Native Christians—Hindu law—Inheritance.—The Succession Act governs the succession in Native Christian families; and since the passing of that Act such families have not been at liberty to adhere to the Hindu law of succession. Held that, if the family continued to observe the Hindu law of succession until the Succession Act altered their rule of succession, the members of the family who were born before the latter Act came into operation could not be deprived of the rights acquired by them under the Hindu law. *IONUSAMI NADAN v. DORASAMI AYYAN*

[I. L. R., 2 Mad., 209

3.

Native Christian—Applicaton under Act XXVII of 1860 for certificate of administration.—Petitioner, a Native Christian, applied under Act XXVII of 1860 for a certificate of heirship to his deceased grandfather. The Civil Judge refused it on the ground that Native Christians are not "Hindus" within the meaning of the term as used in s. 331 of the Succession Act (X of 1865), and therefore that they are affected by the provisions of that Act, and cannot proceed under Act XXVII of 1860. Held upon appeal that the order of the Civil Judge was right. IN THE MATTER OF THE PETITION OF VATHIAR . 7 Mad., 121

4. and s. 2—Converts to

Christianity from Hinduism—Inheritance—Dev-dence of custom of inheritance—Koli caste of fishermen.—The Indian Succession Act (X of 1865), and the rules of inheritance prescribed by it, apply to Hindus who have become Christians; and evidence to show that they and the community to which they belong have retained the Hindu custom of inheritance, is inadmissible. *DAKSHIN v. PACOTTI SAN* I. L. R., 19 Bom., 783

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See CASES UNDER APPEAL—CERTIFICATE OF ADMINISTRATION, ETC.

See BOMBAY CIVIL COURTS ACT, s. 16. [I. L. R., 16 Bom., 277

See CASES UNDER CERTIFICATE OF ADMINISTRATION.

1889).—The provisions of the Succession Certificate Act apply to suits in a Village Munsif's Court. *RASIBI AMMAL v. OLAGA PADAYACHI*

[I. L. R., 21 Mad., 115

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See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—GENERALITY. [I. L. R., 20 Cal., 755

[I. L. R., 20 Bom., 76 See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING: [I. L. R., 18 Cal., 86

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 16 Mad., 454

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See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 19 Bom., 790

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See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 17 Mad., 167

SUDDER COURT.

Meaning of term—Act VIII of 1812—Criminal Procedure Code, 1861, s. 19.—Meaning of the term "Sudder Court" as defined by Act VIII of 1842 and by s. 19 of the Criminal Procedure Code. *REG. v. VYANKATASAYAMI* 12 Bom., 2nd Ed., 106

"SUDDER KHAJANA."

Meaning of term.—The words "sudder khajana" do not necessarily mean a rental payable to the Government, but may mean a rental payable to the zamindar. *KARER TARA DEBIA v. NITTANUND* SUANA . I. L. R., 12 W. R., 90

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NONIES

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[I. T. R. 1 Mad., 62
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I. T. R. 6 Bom., 624
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See CASES UNDER HINDU LAW—ILLEGITIMATE
ANCE—ILLEGITIMATE CHILDREN
See HINDU LAW—ILLEGITIMATE JOINT
PROPERTY AND CO-OWNERSHIP

[I. T. R., 4 Bom., 37
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TO MAINTENANCE—ILLEGITIMATE CHILD-
REN

[3 B. L. R., P. C., 1
[13 Moore's I. A., 141
2 B. L. R., P. C., 16
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I. T. R., 1 Mad., 306
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OR OTHERWISE OF MAINTENANCE

[3 B. L. R., P. C., 1
I. T. R., 1 Cal., 708
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See HINDU LAW—PARTITION—RIGHT TO
PARTITION—ILLEGITIMATE CHILDREN

SUICIDE
See ABETMENT .
1 Agre, Cr., 21
[3 N. W., 316
See ENGLISH LAW—SUICIDE
[1 W. R., P. C., 14 9 Moore's I. A., 387

Attempt to commit suicide—
Penal Code s. 309—Intention Locum penitentiae—
—X, with the intention of committing suicide by
throwing herself into a well ran to the well where
she was arrested. She was convicted under s. 309
of the Penal Code of having attempted to commit
suicide. Held that the conviction was illegal.
QUEEN EMERGES v. HANAKKA I. T. R., 8 Mad., 6

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See BENGAL HVEL ACT, 1860 s. 101
[6 N. I. R., 689
See BENGAL HVEL ACT, 1860 s. 102
[18 W. R., 307
23 W. R., 207

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[I. T. R., 24 Cal., 173
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[I. T. R., 18 Cal., 500

See EXECUTION OF DECREE—APPLICA-
TION FOR EXECUTION AND POWERS OF
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[I. T. R., 12 All., 382

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MITATION HAS BEEN MADE
[I. T. R., 2 Cal., 336
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[I. T. R., 3 Cal., 340
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gate in hereditary office

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(COURT—OFFICES) RIGHT TO
See CASES UNDER RIGHT OF SUIT—OFFICE
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for land.
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for money charged on immove-
able property.

See CASES UNDER LIMITATION ACT, 1877,
ART 132
See CASES UNDER MONTAGAR—SUITS OF
MONTAGAR PROPERTY—MONEY DE-
CRETS OF MONTAGAR

for share of fees—
See CASES UNDER JURISDICTION OF CIVIL
COURT—FEES AND COLLECTIONS AT
CHURCHES

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For turn of worship of idol.

See LIMITATION ACT, 1877, ART. 181.
[6 B. L. R., 352: 15 W. R., 29
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Institution of—

See CASES UNDER LIMITATION ACT, 1877, s. 4.

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Revival of—

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[I. L. R., 5 Cal., 139
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See LIMITATION ACT, 1877, ART. 178.

[I. L. R., 6 Cal., 60
I. L. R., 8 Cal., 420
I. L. R., 5 Cal., 139
I. L. R., 5 Bom., 29]

See PARTIES—SUBSTITUTION OF PARTIES.

1. Notice of revival.—Before a suit can be revived, notice should be served upon the opposite party to appear in support of the decree as originally made. *HUKO MOHUN MOONJEEKAR v. MONJEEBONATH GHOSH* 16 W. R., 135

2. Right to revive suit.—Act III of 1860, s. 2, Act III of 1860, referred to appeals, and also to suits, and as the suit of the special appellant, which had been decreed in the Court of first instance, was dismissed by the lower Appellate Court, the special appellant was held entitled to a revival of his suit. S. 378, Act VIII of 1859, refers to applications for review of judgment, but this was an application for revival of the suit under s. 2, Act III of 1860. *BUNSEHNDUR MUNDUL v. PUDDO LOCHUN ROY* W. R., E. B., 11 [1 Ind. Jur., O. S., 5: Marsh., 38: 1 Hay, 90]

3. Revival of suit by successor of Judge—*Ex-parte decree*—Act X of 1859, s. 58. Where defendants against whom an *ex-parte* decree has been passed by a Collector applied to his successor under s. 58, Act X of 1859, for a revival of the suit, showing good and sufficient cause for their non-appearance, and that there had been a failure of justice, the successor was competent to alter or rescind his predecessor's decree according to the justice of the case. *RUGHOO MONJEE DOSSKAR v. KASHREE NATH ROY CHOWDHURY*. *SHABITREE SOONDURKAR DOSSKAR*

4. Effect of revival—Act X of 1859, s. 58.—The revival of a suit under s. 58,

SUIT—concluded.

Act X of 1859, did not re-open the case as regards all the defendants, out only as regards the party who had applied to have his particular case revived and heard on the merits. *BROJONATH SURMAN CHUCKRABORTY v. ANUND MOYEE DEBIA CHOWDHURY* [7 W. R., 237]

5. Form of order for revival—*Abatement—Civil Procedure Code (Act XIV of 1882), ss. 365, 366, 371*.—The plaintiff died on the 28th August 1883, and in December 1884 letters of administration to his estate were granted to the Administrator-General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885 the Administrator-General took out a summons to revive the suit. *Held* that, notwithstanding the provisions of s. 365 of the Civil Procedure Code (XIV of 1882), it was competent for a Judge in chambers to revive the suit by making an order for abatement under s. 366 of the Code, coupled with an order under s. 371 setting aside the order for abatement. *FUTVAH v. GOUDAS VATHABDAS* I. L. R., 9 Bom., 275

6. Mode of revival—*Revival by Bill—Civil Procedure Code, 1877*.—There is nothing in the Civil Procedure Code to prevent a suit being revived as before it was passed by Bill, if the simpler mode of proceeding is for any reason not available. *ATTORNEY DOSSKAR v. HUKAY DOSS DUTT* [I. L. R., 7 Cal., 74: 9 C. L. R., 357]

Title of—

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.

[2 Ind. Jur., N. S., 245
See PRACTICE—CIVIL CASES—PARTIES.
[I. L. R., 22 Cal., 270]

Withdrawal of—

See CASES UNDER WITHDRAWAL OF SUIT.

SUITS VALUATION ACT (VII OF 1887).

See CASES UNDER VALUATION OF SUITS.

s. 8.

See MUNSIF, JURISDICTION OF.

[I. L. R., 19 Mad., 56]

s. 11.

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

[I. L. R., 18 Mad., 418]

SUMMARY DECISION.

See CASES UNDER LIMITATION ACT, 1877, ART. 178 (1859, s. 22).

SUMMARY ORDER

Suit to set aside—

See Cases under Limitation Act, 1877, art 13 (1871, art. 15).

SUMMARY PROCEDURE

See Magistrate, Jurisdiction or—

General Jurisdiction

See Maintenance, Order or Criminal Court as to

See Cases under Negotiable Instrument, Summary Procedure or

See Practice—Civil Cases—Leave to

See on Demand

[I. L. R., 8 Cal., 539

SUMMARY SUIT.

Cross claim in—

See Compensation—Civil Cases

[I. L. R., 18 Bom., 717

SUMMARY TRIAL

See Cattle Trespass Act, s 20

[I. L. R., 23 Cal., 248

See Practice—Criminal Cases—Signa-

[I. L. R., 5 Mad., 396

See Cases under Legal Convo-

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

See Criminal Procedure Code, s 223

SUMMARY TRIAL—continued

tried summarily under s. 223 of the Code of Crim

nal Procedure Where the acts complained of

summarily, he is not competent to hold a summary

trial *Dwarakanath Masoomdar v. Nabe Das*, 21

W. R., 899, and *Chander Shekar Thakoor v.*

Nataloo, 2 W. R., 29, followed. In the matter

of *Bhupatolla v. Nabin Shukla*

[3 C. L. R., 374

Criminal Procedure Code, s 223—Criterion for testing—

Whether a case is triable summarily or not, must be

determined by the complaint, not by an estimate

formed by the Magistrate (e.g., of the worth of the

property which the accused is charged with having

stolen) after evidence has been recorded and such

estimate cannot retrospectively warrant a mode of

trial which was originally illegal *Han Chandra*

Chatterjee v. Kalyan Laha, 25 W. R., Cr., 19

Criminal Procedure Code, s 260—Complaint including charges

not summarily triable—Summary jurisdiction not

necessarily ousted thereby—The mere circum-

stances of a complaint charging an accused person

with offences not summarily triable along with other

offences so triable would not necessarily oust the sum-

mary jurisdiction of a Magistrate under s. 260 of the

Criminal Procedure Code Whether a complaint

affords sufficient grounds for a summary trial or

not is a question of fact

[I. L. R., 10 All., 55

Value stolen in

cases of theft as determining jurisdiction to try sum-

marily—*Extent, Mode of taking*—In a case in

containing RTO in cash and of the box worth 8 annas

6 pice, the Magistrate committed the box to be of no

upon tried the case summarily under s. 223 of the

the same way as evidence upon the merits of the

case, and as it was not taken, the Court held that the

Magistrate had no jurisdiction in this case *Queen*

Matters necessary to be

noted in the record of a summary trial—

Criminal Procedure Code (1893), ss. 260, 263—

and s.—Where a Magistrate invested with powers

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SUMMARY TRIAL—continued.

under s. 260 of the Code of Criminal Procedure is trying a case summarily, it is desirable that he should set out under the column reserved for that purpose so much of the reasons that have influenced him as to satisfy the accused that the Magistrate has considered each of the ingredients necessary in law for the conviction to which the Magistrate has proceeded, and that, while this should be recorded with brevity, the brevity should not be such as to tend to obscurity. The record of a summary trial contained in the column corresponding to cl. (b) of s. 263 of the Code of Criminal Procedure the following entry: "The police made a raid on information received, and caught all the accused gambling. The defence of Muktad, Manu, Kail Chauru, Ballau, and Guizari Lal involved the absurdity that the police obtained a warrant to raid a house in which they could have no reason to suppose they would find any one. I convicted Muktad of keeping a common gambling-house—s. 4, Gambling Act. I convicted the other six defendants of gambling in a common gambling-house—s. 3, Gambling Act." Held that this entry, though it should have been more explicit, was a sufficient compliance with the requirements of the law. QUEEN-BARRISTERS v. MURRAY LAL

[T. L. R., 21 All., 189

9. Case instituted by Magistrate—Criminal Procedure Code, 1872, s. 222—

Institution by Magistrate without complaint.—Where an accused person had, at the instance of the Magistrate, who had come across him while out walking one morning, encroaching on an embankment, been placed on his defence for mischief, and summarily tried and sentenced to two months' rigorous imprisonment,—Held that, in a case of this kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily and sentencing of the accused to imprisonment. IN THE MATTER OF THE PETITION OF RAJA NATH BAKERRER . 25 W. R., Cr., 69

10. Criminal trespass and mischief—Magistrate, Jurisdiction of—Code of Criminal Procedure (Act X of 1882), s. 260.—A person may be tried summarily for criminal trespass and mischief unless there is a bond fide claim of right depriving the Magistrate of jurisdiction. SHAKUR ALAM v. CHANDER ALAM v. ROHIM

38, disapproved. ISSUR CHANDER ALAM v. ROHIM SHEKH, 25 W. R., Cr., 65, distinguished. GAYR-UTLAH SARKAR v. ABDUL SHEIKH [T. L. R., 10 Cal., 408

11. Mischief combined with theft—Criminal Procedure Code, 1872, s. 222.—A charge of mischief, even if combined with one of theft, is triable summarily under Act X of 1872, s. 222. QUEEN v. KHAMOTAR PARR

[25 W. R., Cr., 5

12. Offence under Act XXI of 1856—Criminal Procedure Code, 1872, s. 222 and s. 148.—Illegal possession of opium.—On a conviction, under Act XXI of 1856, of having in possession

SUMMARY TRIAL—continued.

opium not supplied from Government stores, the Magistrate tried the case summarily under s. 222, Code of Criminal Procedure, and passed a sentence of fine or imprisonment, and confiscation of the opium. Held that the case could not be tried summarily, the additional sentence of confiscation not coming under s. 149, Code of Criminal Procedure. QUEEN v. JODOO NATH SHAMA . 23 W. R., Cr., 33

See IN THE MATTER OF THE PETITION OF KHETTER MOUVU CHOWRUNGHEE [22 W. R., Cr., 43

13. Criminal Procedure Code, s. 260—Act XIII of 1859, s. 2.—Offences under s. 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code. QUEEN-BARRISTERS v. INDARJE [T. L. R., 11 All., 262

14. Illegal possession of opium.—Offence punishable by fine and confiscation.—An offence under s. 49 of Act XXI of 1856 can be tried summarily under s. 222 of the Criminal Procedure Code, the confiscation provided by s. 49 being merely a consequence of the conviction, and not forming part of the punishment for the offence. BARRISTERS v. BAIDAMATH DASS [T. L. R., 3 Cal., 366; 1 C. L. R., 442

15. Criminal intimidation—Criminal Procedure Code, 1872, s. 222.—Where a head constable of police of many years' service was charged with criminal intimidation with a view to prevent a person from giving evidence against serious offenders, and the District Magistrate tried the case summarily under the special power given by s. 222 (10) of the Code of Criminal Procedure, 1872,—Held that the case ought not to have been tried summarily. SUBRAMANNA v. QUEEN [T. L. R., 6 Mad., 396

16. Offences one triable summarily and the other not—Criminal Procedure Code, 1882, s. 260.—Omission of charge so as to give summary jurisdiction.—Where an accused is charged with offences one of which is triable summarily and the other not so triable, it is not open to a Magistrate to discard the latter charge and to proceed to try the case summarily. RAMANUND MANION v. KOVLASH MANION [T. L. R., 11 Cal., 236

17. Alteration of charge to make it triable summarily—Criminal Procedure Code, 1872, ss. 222-230.—Power of Magistrate.—The powers conferred upon Magistrates under the 18th chapter of the Criminal Procedure Code, 1872, were not intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of that chapter; but when a charge of a serious offence which the Magistrate is not competent to inquire into summarily—is preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases, and either to convict or acquit, or commit for trial, the person implicated. The procedure under Ch. XVIII is to be followed when

SUMMARY TRIAL—continued.

123 W. H. C. 28

24 W. B., Cr., 48

attributed to them constitute, but in trying the case as one under s 143, Penal Code, for the purposes of

19. Alteration of[illegible]

of dacoity, the Magistrate had no jurisdiction to alter it and try the case summarily. DEAKANATH

to charge of himself—where a charge of non-

of the accused, that the summary order might be set

[23 W. B. C. 18]

trial could not be held

(2) that the Magistrate had no power to convict of

A TOLA

01 34310 838000 043 7443 '60000 8000000 043 7443

32 ————— Alteration of charge from
jacking house trespass or house-breaking

—Criminal Procedure Code, 1872, ss 141, 222—
Alteration of charge from one offence to another—

may consider covered by the facts complained of by

has determined the degree with which the
without reference to the procedure, which
was found to be a significant factor in the

a Magistrate by the police charged with an offence under s 457 of the Penal Code, an offence not

and to try the accused humbly under the provisions of a 223 of Act 2 of 1872 IN THE MATTER OF **W. A. N. 354**

—Insufficiency of evidence—Criminal Procedure Code, 1872, ss 222 to 230—If on appeal from a

24. Magistrate, Power of to try case summarily - Criminal Procedure Code

as 17, 16, 148, and 149 of the Penal Code. The Legislature, having passed the petition of the com-

and evidence that he had been in the vicinity of the occurrence, and merely stated in his testimony that he had been in the vicinity of the occurrence.

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971) using a Shimadzu 1010 spectrophotometer. The concentration of chlorophylls was expressed as $\mu\text{g mL}^{-1}$ of the sample.

the 1990s, the number of people in the world who are under 15 years of age is expected to increase from 1.1 billion to 1.5 billion. The number of people aged 65 and over is expected to increase from 250 million to 450 million. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion. The number of people aged 15 and over is expected to increase from 3.5 billion to 4.5 billion.

conspiratorial actions of the Iraqi regime to effect the overthrow of the Government of the State of Kuwait.

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SUMMONS—continued.

not served.

See PRINCIPAL AND SURETY—DISCHARGE

OR SURETY. I. L. R., 14 Bom., 287

See WITHDRAWAL OF SUIT.

[I. L. R., 15 Bom., 160

Refusal to grant receipt for—

See BESAT CODE, s. 173.

[5 Bom., Cr., 34

I. L. R., 3 Cal., 621

I. L. R., 20 Cal., 358

to attend taxation.

See COSTS—TAXATION OF COSTS.

[7 B. L. R., Ap., 50

See LIMITATION ACT, 1877, s. 4.

[I. L. R., 20 Cal., 899

1. Issue of summons—Issue after

period of limitation.—A summons ought not to be

action prescribed for a suit, unless the plaintiff has, in

the meantime, done what he can to prosecute his suit

with proper diligence. If a defendant is aggrieved

by an order directing a summons to issue in such a

case, he ought to set aside the order and the

summons under it. GURJAN COOKAR DUTT v.

JOGABADIA DABBE. I. L. R., 5 Cal., 126

2. Issue of fresh summons—

Return of old summons.—A fresh writ of summons

will not be granted till the old one is returned into

Court. ISAKHONKAR SRIY v. ANSOTOSH CHAT-

TERSE. 1 Ind. Jur., N. S., 283

3. Application for fresh sum-

mons—Practice.—An application for a fresh sum-

mons to appear, etc., should be issued on petition

showing that a fruitless endeavour had been made on

the part of the plaintiff to serve the first summons,

and that it was not by any default of his that he had

failed. UNGHART v. GIBBERT

[1 Ind. Jur., N. S., 224

4. Grant of second summons—

Discretion of Judge—Practice—Rule 12 of High

Court Rules, 1st May 1875—Laches.—A Judge

has, under rule 12 of the Rules of 1st May 1875,

discretion as to granting a second summons, and is

bound to inquire into the circumstances under which

it is applied for; and when there has been great and

unexplained laches, he should refuse it. Unless such

discretion is clearly shown to have been improperly

exercised, the Court will not interfere on appeal; but

under the circumstances of this case, the Court on

appeal, finding there was no definite rule of practice

as to the time within which a second summons might

be applied for, allowed a second summons to issue.

GOURKURN SOOR v. PRABY LATI PAUL

[15 B. L. R., Ap., 12

5. Mistake in summons—Amend-

ment of summons at hearing—Practice—The de-

fendant was manager of a joint Hindu family carry-

ing on business in Bombay, Madras, and other places.

In a suit in the High Court of Bombay against him

as such manager, a decree was passed on the 11th

SUMMARY TRIAL—continued.
which he really complains disclose such offences,
GOTAB RAMPY v. HODDAB

[I. L. R., 16 Cal., 715

26. Criminal Pro-

cedure Code (Act 1 of 1893), s. 260—Summary pro-

cedure under Penal Code, s. 323, after enquiry into

the grave charges under ss. 117 and 321 not triable

summary. A first class Magistrate took a case on

his file and commenced a regular enquiry thereon under

ss. 117 and 321 of the Indian Penal Code; but after

hearing evidence and being of opinion that only an

office under s. 323 of the Indian Penal Code had

been made out, he proceeded to deal with the case

summary. Held that, inasmuch as the evidence

adduced was not sufficient to justify a commitment, but

clearly disclosed an offence over which he had sum-

mary jurisdiction, the Magistrate was right in acting

as he did. Such a course is different to directing

part of a charge for the purpose of dealing with a

case summary. The High Court will not interfere

where a Magistrate has bona fide acted in the in-

terests of justice. *Regist v. Abdul Karim, I. L.*

R. 1 Cal., 15, distinguished. *QUEEN v. FURNESS v.*

RANGARANI. I. L. R., 22 Mad., 459

SUMMING UP EVIDENCE.

See ABUSEMENTS. 7 B. L. R., 63, 67 note

[I. L. R., 9 Cal., 875

4 Mad., Ap., 39

See CASES UNDER CHARGE TO JURY.

SUMMONS.

See INSPECTION OF DOCUMENTS—CRIMI-

NAL CASES. I. L. R., 19 Cal., 52

See PRODUCTION OF DOCUMENTS.

[W. R., 1884, 164

See CASES UNDER WITNESS—CIVIL CASES

—SMOKING AND ATTEMPTING TO

WITNESSES.

See CASES UNDER WITNESS—CRIMINAL

CASES—SMOKING WITNESSES.

Application for—

See LIMITATION ACT, 1877, ART. 178.

[I. L. R., 3 Cal., 312

I. L. R., 5 Cal., 126

in chambers.

See COMPANY—WINDING UP—LIABILITY

OF OFFICERS. I. L. R., 19 Bom., 88

Issue of—

See PANDANASHIN WOMEN.

[I. L. R., 21 Cal., 588

Leave to amend—

See SMALL CAUSE COURT, PRESIDENCY

TOWNS—JURISDICTION—IMMOVABLE

PROPERTY. I. L. R., 2 Bom., 91

SUNDAY—concluded.

Trial on—

See HOLIDAY

8 B. L. R., Ap., 12
[W. R., 1864, Cr., 2
17 W. R., 230
See LORD'S DAY ACT 8 N. W., 177

SUNDERBUNS BOUNDARY.

Beng. Reg. III of 1828, s. 13.—
S. 13, Regulation III of 1828, was intended to make
provision for the immediate settlement of the limits
of the Sunderbuns; hence it fixed permanently a
period after which the demarcation of those limits,
made by the Special Commissioner to that end,
appointed, should be final. No person could come
in after that period (namely, three months from the
date of the Commissioner's proceedings fixing bound-
ary) pleading infancy or other ground for re-opening
the question of boundary, since the geographical
boundary line was necessarily to be one and the
same for all the world. Even within the period of
limitation allowed, no one could be heard to object
to the line, unless he declared and offered proof that
at the time of the survey he was in the occupation
of a definite quantity of land cleared and under cul-
tivation within the line. After the line had once
become final, no party could be heard to say that
even cultivated lands within it were part of his
settled zamindari. BARADAKANT, Roy v. COMMISSIONER OF THE SUNDERBUNS
[2 B. L. R., P. C., 33: 11 W. R., P. C., 14

SUNDERBUNS ESTATE—

See BENGAL ACT VII of 1864, s. 1.
[1. L. R., 14 Cal., 440
See SALE FOR ARRAHS OF REVENUE—
INCUMBRANCES—ACT XI of 1859.
[1. L. R., 14 Cal., 440

**SUNDERBUNS SETTLEMENT REGU-
LATION (BENG. REG. III OF 1828).**

Lease granted by duly constituted
Revenue authority, Effect of settlement on.
—*Per BANERJEE, J.*—Though certain provisions of
Regulation III of 1828 go to show that the Sunder-
buns, up to that date, continued the property of the
State and had not been permanently settled with any
one, that was intended to be said generally with regard
to the tract of country known as the Sunderbuns as a
whole, and it could not have been intended to undo the
effect of any lease granted by any duly constituted
Revenue authority. TAVASNA BIRI v. ASHUTOSH
DHUR
4 C. W. N., 513

SUPERINTENDENCE OF HIGH COURT.

1. ACT XXIII OF 1861, s. 35
2. BOMBAY REGULATION II OF 1827 . 9003
Col. 8997

SUMMONS, SERVICE OF—concluded.

defendants to an action brought on a joint promissory
note does not give the third defendant, who has
been properly served, ground for objecting to a decree
which has been passed against him under Act V of
1866. EWING v. GOSAI DAS GHOSH
[2 B. L. R., Ap., 7

46. Defendant res-

—In a suit for rent under Act X of 1859, ss. 47, 56,
summons on a defendant, whose abode is in another
district in which the suit is brought, instead
of through the Collector of the district in which the
defendant resides, as required by s. 47 of the Act, is
not such an irregularity as vitiates the whole pro-
ceedings and renders the decree, and a sale in exe-
cution thereof, void. *Per JACOBSON, J.*—The words
in s. 56, "upon proof that the summons or proclama-
tion has been duly served according to the provisions
of this Act," refer to the mode in which a summons
is to be served, and not to the agency by which it is
to be served. MACKINTOSH v. KATLY DOSS
MUTLUK . 11 B. L. R., 1: 19 W. R., 234

47. Service on wrong

person—*Erroneous description of defendant in
plaint—Dismissal of suit.*—In a suit brought by the
plaintiff against A, the summons was by mistake
served upon B, who thereupon filed a written statement
denying his liability and alleging that he was errone-
ously described in the title to the plaint. On the day
of the hearing of the case the plaintiff's agent saw B
for the first time, and ascertained that he was not the
real defendant in the suit. *Held* that the case
having come on for hearing, and there being nothing
to show that the plaintiff had been in any way
deceived by B, the proper order to be made was
for the dismissal of the suit. LONDON, BOMBAY,
AND MEDITERRANEAN BANK v. MAHOMED IBRAHIM
PARKAR . 1. L. R., 4 Bom., 619

SUNDAY.

Arrest on—

See ARREST—CIVIL ARREST.

[4 Mad., Ap., 62

See CASES UNDER LORD'S DAY ACT.

Delivery of goods on—

See CONTRACT—CONSTRUCTION OF CON-
TRACTS . 1. L. R., 15 Bom., 338

Presentation of plaint on—

See HOLIDAY.
[3 B. L. R., Ap., 72: 11 W. R., 537
16 W. R., 231

Time expiring on—

See CLASSES UNDER LIMITATION ACT, 1877,

See WRITTEN STATEMENT

Cor., 39

SUPERINTENDENCE OF HIGH COURT—continued.

1. ACT XXIII OF 1861, S. 35—continued.

14. ———— *Order of Collector for ejecting gantidar.*—Where a gantidar on the suit of the patidar was ejected from his holding, notwithstanding a right of occupancy independent of his gant, an appeal lay to the Collector, whose order could only be questioned by a civil suit, and not under s. 35, Act XXIII of 1861. *RUGHONNATH MITTHA v. WOODHASTH CHOWDHRY*

[W. R., 1864, Act X, 47]

15. ———— *Extraordinary jurisdiction of High Court.*—Power to deal with order staying execution.—Where a subordinate Judge, in consequence of a fresh suit by the plaintiff, stayed the execution of a decree which was passed in the defendant's favour for costs, the High Court, in exercise of its extraordinary jurisdiction, reversed the stay order. *GADHINATHAL v. CHETMAL JODHIAL*

[11 Bom., 151]

16. ———— *Refusal to set aside Collector's order made without jurisdiction, where it reversed an illegal order.*—A rule having been issued calling on a judgment-debtor to show cause why an order of the Collector in appeal, reversing an order made by a Deputy Collector in execution, should not be set aside, the rule was discharged with costs, inasmuch as, although the Collector had no jurisdiction to make the order which he made, the Deputy Collector's order was wrong, being a violation of the provisions of s. 32 of Act X of 1859, and could not be upheld. *TANACHAND ALKADUT v. BUNYAD CHUDEN CHUDERNKUNTRY*

[15 W. R., 551]

17. ———— *Right of appeal.*—*Sale for arrears of rent, irregularly in.*—A Civil Court had no power, under s. 35 of Act XXIII of 1861, to reverse a sale for arrears of rent under Act X of 1859 on account of irregularity or damages, without the aggrieved party having first appealed to the Commissioner of Revenue. Act XXIII of 1861 gave no power to the High Court to consider the legality or otherwise of the Collector's order without such appeal. *SUDHAR GORAB SINGH v. RAY BUDUDU SINGH*

[1 Ind. Jur., N. S., 1: 4 W. R., Act X, 28]

18. ———— *Selling and sale in execution.*—*Court exceeding jurisdiction.*—If the Judge exceeded his jurisdiction in hearing the appeal from the order of the Sudder Amin selling aside a sale in execution, on the ground of the non-payment of the purchase-money within the proper time,—*Held* that it was competent for the High Court, exercising its power under s. 35, Act XXIII of 1861, to set aside the order of the Sudder Amin.

AMANER BHOOT v. KOOBAN ARI 3 AGRA, 204

[3 AGRA, NOV., 10]

19. ———— *Act XXIII of 1861, s. 35.*—*Order made without jurisdiction.*—*Interference with order of lower court.*—*Petitioner bought at a Court sale certain property which had*

SUPERINTENDENCE OF HIGH COURT—continued.

1. ACT XXIII OF 1861, S. 35—continued.

is no ground for interfering with a decision which the Legislature intended to be final. JACKSON, J., differed. IN THE MATTER OF THE PETITION OF SUB-TAN OSTAGUD

[B. L. R., Sup. Vol., 531: 6 W. R., Mis., 77]

8. ———— *Power to call for record.*—*Discretion of Court.*—Under s. 35 of Act XXIII of 1861, there was a discretion in the Court to call for the record or not; and in cases where the application was made a considerable time after the decree, the Court refused to call for it. *BOONHE v. ALTEE HYDER*

[1 N. W., Bd. 1873, 271]

9. ———— *Appeal from order refusing to rectify a decree.*—The general powers of the High Court do not enable it to hear an appeal from an order of a Zillah Judge refusing to rectify a decree. *MAHOMED BUSHENOOTLAN CHOWDHRY v. RAMKANT CHOWDHRY*

[9 W. R., 394]

10. ———— *Application to transfer appeal.*—*Lawes.*—An application to the High Court, under s. 35 of Act XXIII of 1861, to order a subordinate Court to receive an appeal, which in ordinary course ought to have been received within fifteen days of the original decision (in this case to transfer an appeal from a Court which had dealt with it without jurisdiction) ought to be made either immediately upon the quashing of the order of the subordinate Appellate Court, or promptly and without any avoidable delay. IN THE MATTER OF RUSSION LATE CHATTERJEE

[15 W. R., 518]

11. ———— *Appeal preferred in Court having no jurisdiction.*—*Extension of time for appealing.*—When an appeal had been preferred by the plaintiff to the Collector, the Court made an order giving the plaintiff thirty days within which to prefer his appeal to the Collector instead. *ADHIRAM NARAYAN KUMARI KASHAKI v. BUDHAWAN v. PUNJIB KAWTRA*

[7 B. L. R., Ap., 15: 15 W. R., 426]

12. ———— *Decision by Collector as to genuineness of deed.*—Where a Collector decided upon the genuineness of a deed of sale, he was held to have exceeded his authority, and his order could be set aside by the High Court under s. 35, Act XXIII of 1861. *TOYUCHOKHATH SINDAR v. BATUCHAN Doss*

[W. R., 1864, Act X, 28]

13. ———— *Illegal order of Deputy Collector.*—Where a Deputy Collector, who had decreed a suit for ejectment on proof of arrears due, held afterwards in execution that as the arrears had been paid up within fifteen days the tenant could not be ejected in accordance with s. 78, Act X of 1859, his order in execution was declared to be ultra vires and illegal, and was set aside by the High Court under its general powers of revision. *DEEN DIAL PUNAMATIK v. KANCOONAN CHOWDARY*

[10 W. R., 345]

been at
the Dis
certific
No 79 of 1860 presented a pro
of the property, on the ground that it had been

tion of the decree in suit No 23 above
the Civil Court and purchased by the plaintiff in
that suit. Thereupon petitioners applied to the Munsif
to sell the property in satisfaction of his claim.

The Munsif
upon an ap
special a
himself

jurisdiction to entertain the appeal was
giving effect to the petition of special appeal as a
petition under s. 35 of Act XXIII of 1861, that the
orders of the lower Courts should be annulled and the
petitioner declared entitled to an order and certificate

20. **Order remaining**
suit—Application to set aside order from which
appeal could have been brought—Where a Judge on
regi. 14 a defendant had remanded a case

21. **Power of Judge to**
interfer
having
dinate.
dent in a
ment, the High Court set aside the Judge's order
under the provisions of s. 35 of Act XXIII of 1861
[6 N. W. 124

Power of High
Court—Under this section, the High Court should
not only reverse the illegal order, but pass the order
that should have been made. **ADAMKORIAN DOSSAN**
& **KAMRAN SONDHAR DEDIA**
[3 W. R., Act X, 145

RAY CHUNDER ROY CHOWDHURY & **CHANDER CHAK**
NEW ROY
5 W. R., 145

market value of the property to whom the plant was then

second class Subordinate Judge who was with a
returned the plant. That Judge held that he had
no jurisdiction to review the order passed by his pre
decessor. The plaintiff appealed, and the Judge
rejected the appeal, holding that no appeal lay against
an order refusing to grant a review. The plaintiff
applied to the High Court under its extraordinary
jurisdiction. **Held** that the case was one in which
the High Court ought to interfere under cl. 2, s. 5 of
Bombay Regulation II of 1827. The order of the
second class Subordinate Judge was set aside with a
direction that he should admit the plaintiff to the
date of its original presentation. **GIDHANAKAT HAS**

[1 L. R., 20 Bom, 50
2. CHARTER ACT 12 & 25 VICT, II 104, S 15
(a) CIVIL CASES

24 **Functions of**
High Court under s. 15 of the Charter Act—Nature
of superintendence.—**Held** (per STRAY, C. J.) that
under s. 15 of 24 & 25 Vic., c. 104, the power
of superintendence to be exercised by the High
Court is not merely administrative or ministerial, but
also judicial. **BURNS KOORN** & **DAKODAN DAS**
[5 N. W., 65

25 **Object of superin**
control over the Courts subject to the
jurisdiction. **DOSSAN** & **SARKINABASH DRY**
[13 W. R., 74
—**Beng. Act VIII**
of 18

26 **Power of High**
Court under s. 15 of the Charter Act—**Held** that the power
conferred by that section ought not to be exercised
in such a way as to indirectly that which the law
forbids to be done directly. **KAMIN STRAY** &
MINORAS SONDHAR DASSAN
[15 H. L. R., III: 23 W. R., 268
Reserving decision in **MOONODA SONDHAR DASSAN**
& **KAMRAN SHAKIR**
23 W. R., 11

3. CHAPTER ACT (24 & 25 VICT, C. 104), S. 15—continued.

share of the execution-debtor, the High Court, in the exercise of its extraordinary jurisdiction, refused to interfere, in consequence of the laches of the applicant in neglecting to avail himself of an opportunity of showing that the partition which had been made was injurious to him. *MATYUDAS GOVARDHANDAS v. PATMA ULKA BEGAM* [5 Bom., A. C., 63]

33. *Order of Judge under s. 269, Civil Procedure Code, 1859—Resistance to delivery of possession in execution of decree.*—The Court declined to interfere under s. 15 of the Charter Act in order to set aside an order lawfully made by a Judge under s. 269, Act VIII of 1859, upon a complaint made to him of resistance or obstruction to the delivery of possession under s. 264, and stated that it would not have interfered even if the order had been made without jurisdiction, after the delay that had taken place, the petitioners' remedy being to bring a regular suit to establish their right. *ZUHOORUN BEGUM v. MAHOMED WAZIR* [18 W. R., 87]

34. *Laches—Existence of another remedy.*—Petitioner, a decree-holder, allowed another decree-holder to obtain a decree upon a regular suit declaring him entitled to follow the properties in dispute in execution of his decree, and did nothing even after that decree was obtained until another decree-holder applied for the attachment and sale of the properties in execution of his decree, and the lower Court having all the parties arrayed before it, and having passed an order rejecting the petitioner's application, petitioner, after more than ninety days (the period limited for an appeal) had elapsed, invoked the aid of the High Court under s. 15 of the Charter Act; but the Court declined to exercise that jurisdiction, leaving the petitioner to his remedy in a regular suit. *KALER KISHORE SEN v. WISE* [17 W. R., 477]

35. *Order rejecting claim of attorney to lien on document for his costs—Existence of other remedies.*—A firm of solicitors, having been summoned to produce certain documents before the Court, objected to do so claiming a lien upon them for costs due to them from the party at whose instance the documents were called, and their objection having been overruled, they moved the High Court under s. 15 of the Charter Act. *Held* that the High Court is not compelled to use the power of superintendence created by the Charter Act unless, in the interests of justice, it finds it necessary to do so, and that in the present case there is no danger of any such failure of justice as would render it necessary for the High Court to interfere, specially having regard to the fact that the loss of this particular remedy, assuming the attorney to be entitled to it, does not involve the loss of his costs, as he still has all the other remedies, for the recovery of his claim. *Semble*—The power of superintendence under s. 15

3. CHAPTER ACT (24 & 25 VICT, C. 104), S. 15—continued.

27. *Existence of remedy by suit.*—Where the applicant has a remedy by regular suit, the Court is reluctant to interfere. *MADHUB CHANDER GIERE v. SHAM CHAND GIERE*. IN THE MATTER OF THE PETITION OF MADHUB CHANDER GIERE [1 L. R., 3 Cal., 243]

MAHASANKAR HARISANKAR v. VALIBHAI UMANGI [6 Bom., A. C., 174]

BISHNO CHUNDER BHATTACHARJEE v. SHOSHNE MOHUN PAL CHOWDHURY [22 W. R., 277]

HURESHU MOOKERJEE v. NOBIN CHUNDER DOSS [20 W. R., 202]

28. *Existence of remedy by suit.*—The High Court cannot interfere under s. 15 of the High Courts Act where the lower Court has not acted without jurisdiction, or where there is a remedy by a regular suit. *KHOSHRAH ALI v. CHOWDHRY WAHID ALI* [15 W. R., 170]

DOORGA SOONDURER DEBIA v. KASHRE KANTI CHUCKERBORTY [14 W. R., 212]

29. *Existence of other remedy.*—Where a petitioner had his remedy under s. 269, Act VIII of 1859, and the Munsif had, whether right or wrong, acted within his jurisdiction, the Court held it had no power to interfere under s. 15 of the Charter Act. *HUR KISHORE ABDIOARY v. SUDOV CHUNDER NUNDRE* [17 W. R., 80]

30. *Existence of remedy by regular suit.*—S was adjudicated an insolvent in the Insolvent Court, Calcutta. R thereupon deposited in the Court a sum for which S had obtained a decree against him. This decree S had attached by T under a decree obtained by him against S, and they applied to the Chahabud Court for satisfaction of their decree out of the money deposited by R. The Official Assignee opposed the application, which was granted. The Official Assignee petitioned the High Court to interfere under s. 15, 24 & 25 Vict, c. 104, but the Court refused to interfere, on the ground that there was a remedy by suit for injunction and application for a preliminary order under s. 92, Act VIII of 1859. *IN RE MILLER* [4 B. L. R., A. C., 72 note: 12 W. R., 103]

31. *Delay in making application.*—The Court refused to extend assistance by the exercise of its extraordinary powers under the High Court Act, s. 15, to parties who were chargeable with great and unexplained delay. *RADHA MONUN ROY v. RAJ CHUNDER SHAH* [22 W. R., 522]

[2 C. L. R., 545]

BRUGGOBUTTY KOWAR v. MONKY

32. *Power of High Court.*—Where the Court below adopted a different procedure, and after partitioning the property, put up for sale the divided

in cases in which the High Court has no appellate jurisdiction do not give the latter Court power to interfere under s. 15 of the Charter Act, its interference being restricted to cases in which the lower Court exercises a jurisdiction which it has not, or refuses to exercise a jurisdiction which it has. KAREE HUR DAS v. ROODRASSUR CHOKKIBARTTY [15 W. R., 80] ISSUE CHUNDER PODDAR v. SHOSHNE DUTTA SEN [18 W. R., 289]

53. Court acting without jurisdiction—Error in law.—The interference of the High Court under s. 15, 24 & 25 Vict., c. 104, should be confined to cases in which the lower Court has acted without jurisdiction, or has improperly declined jurisdiction, and should not be extended to cases in which the Court, though competent in respect of the subject-matter, has misconceived the law in deciding a case. IN RE KAST-NATH ROY CHOWDERY 7 B. L. R., 146 note S. C. KASHEENATH HOY CHOWDERY v. SHABI-TREE SOONDHAR DOSS [11 W. R., 402] Error in law—Injustice, Prevention of—Where there has been a manifest error of law, and to prevent manifest injustice, the High Court in the exercise of its extraordinary jurisdiction will remand a case to the lower Court, though the value of the claim may be under Rs500 and the case may be one in which a special appeal is not allowed. RAMAIAI v. THIRU-BAR GANESHI DESAI 9 Bom., 283.

55. Error in consequence of false statement of law made in consequence of false statement of party.—The High Court will interfere, under s. 15 of the Charter Act, with an order made by a lower Court, which is merely contrary to law, when that order has been passed in consequence of a wilfully false statement made by the opposite party. ROHNO NUNDU LALL v. MOHESH LALL 3 C. L. R., 137

56. Wrong decision where no special appeal lay.—Where the lower Court's decision was fundamentally wrong in law, and the liability of the defendants in the essential matter of the suit had not been properly tried, the High Court, although not warranted in interfering in special appeal (by reason of the suit being a money claim under Rs500), was justified in interfering under its general powers of supervision. SHAMADAR v. BROJOO RAI 22 W. R., 44

57. Refusal of order of confirmation of sale—Error of law.—A certified purchaser of property sold in execution of a decree applied to the Judge for an order of confirmation of sale, and was refused. Held that the High Court had no power to interfere with the Judge's decision, even though erroneous on a point of law, upon a matter entirely within his jurisdiction, and from

views, the debtor's remedy is either by an application for review or by an application to the High Court to exercise its powers under the Charter Act, s. 15. DOORGA DOSS SAMPAL v. PANCHOO RAM MUNDUL [23 W. R., 271]

47. Refusal of application under Act VIII of 1859, s. 119—Ex parte decree.—Judgment was passed ex parte against a defendant who had not appeared. The defendant failed to show cause for setting aside the judgment under s. 119 of Act VIII of 1859. He then applied to the High Court under s. 15 of 21 & 25 Vict., c. 104, to set aside a portion of the decree as having been passed without jurisdiction. The Court refused to interfere. IN THE MATTER OF THE PARTITION OF LESLIE [10 B. L. R., 68; 18 W. R., 474]

48. Discretion of Municipality—Rates for cleaning tank.—Case in which the Munsif held that the Municipality had expended more money than was necessary in cleaning the petitioner's tank, and the Judge on appeal set aside the Munsif's decision and gave the Municipality a decree, on the ground that under the law the matter was purely within the discretion of the Municipality. Held that, even though the rates charged by the Municipality were higher than those which could be obtained by other persons, that was no ground for the interference of the High Court. IN THE MATTER OF JOSEPH CHANDER DUTT [16 W. R., 285]

49. Exercise of discretion under Act XX of 1863, ss. 4 and 5—Refusal of jurisdiction.—Where an application by a petitioner under Act XX of 1863, s. 5, to be appointed manager of a religious endowment, was rejected by the Judge after hearing both sides, on the ground that there had been no transfer of the property by the Local Government under s. 4, the Court refused to interfere under s. 15 of the Charter Act, holding that the Judge had not declined to accept jurisdiction in the case, and that he was right in refusing to exercise the jurisdiction vested in him by s. 5. ASHUTOSH HOSSEIN v. HAZARA BEGUM 18 W. R., 396

50. Order rejecting document under s. 129, Civil Procedure Code, 1859.—The High Court refused to interfere under s. 15 of the Charter Act to set aside an order rejecting a document made by a Court under Act VIII of 1859, s. 129, an appeal from such order being barred by s. 363. IN THE MATTER OF ERSKINE 18 W. R., 511

51. Error of law.—Is a conflict between a Judge's order and a direction of law ground for the High Court to exercise its powers of interference? DOSS v. SREENIBASH DEY 12 W. R., 74

52. Error of law—Case where no appeal lies to High Court.—Mere errors of law committed by a lower Appellate Court

SUPERINTENDENCE OF HIGH

COURT—continued.
3 CHARTER ACT (24 & 25 VICT, C 104), S 16

—continued.
which there was no appeal. IN THE MATTER OF THE

ESTATE OF DURG CHAMAN SINGH
[3 B. L. R., A. C. 165
C DOORGA CHAMAN SINGH v DOORGA CHAMAN
II W. R., 23

58. Error of law—
The High Court will not, under s 15 of 24 & 25

Vict, c 104, interfere with judgments, decrees, or orders of a lower Court on the bare ground that they are erroneous at law, or are based upon a wrong

statement of facts, there must be some special

error of law—

proceeded on an error of law or an error of fact

Where, therefore, on appeal by the judgment debtor against an order combining a sale of immovable property in the execution of a decree, the lower Court set

aside the decree

tioned above

THE HAN v HANSEN
I. L. R., 1 ALL, 101

Reasons of
judicial proceedings—jurisdiction of High Court

1111 Procedure Code, s 622—Held by Lord.

or an error of fact. The High Court's power to direct a subordinate Judge to do his duty is not limited to cases in which such Judge declines to hear or determine a suit or application within his jurisdiction. Held by Sir James and Lyndell, JJ, that the word "superintendence" used in s 15 of the Charter Act contemplated and now includes powers of a judicial or quasi-judicial character, apart from those conferred on the Court by s 622 of the Civil Procedure Code, but that the last mentioned provision may properly be accepted as indicating the extent to which the Court should ordinarily interfere with the findings of such subordinate tribunals are invested with exclusive jurisdiction to try and determine all questions of law and fact arising in suits within their exclusive cognizance, and in which their decisions are

SUPERINTENDENCE OF HIGH

COURT—continued.
3 CHARTER ACT (24 & 25 VICT, C 104), S 15

—continued.
declared by law to be final by Ram v Hansen.

I. L. R., 1 ALL, 101, Girdhar Singh v Hardo Narain Singh, I. R., 3 I. A. 230, and in the matter of the petition of Alahtra Parthad, I. L. R., 1 ALL, 296, referred to the judgment of

PERKINS, C. J., in Badami Kaur v Dina Kaur, I. L. R., III, explained.

11. L. R., II ALL, 104

Code (1882), s 622—Failure of duty by a subordinate Court—Where a subordinate Court had

equally failed to do its duty, and there had been no patent neglect on the part of the petitioner.—Held

on an application for revision, that it is competent for the High Court under the general powers of supervision vested in it by s 15 of 24 & 25 Vict

c 104, to direct the subordinate Court to do its duty, and complete the case according to law

Mahammad Sultan Khan v Rattim, I. L. R., 9

II. L. R., 18 ALL, 4

Error of law

—Revision of claim to attached property without decision on necessary questions—Where it was found

claim without determining certain questions of law which it should have determined, the error was held

to be not such that it ought to be rectified by the High Court in the exercise of its power of revision under s 15 of the Stat 24 & 25 Vict, c 104, or

State 24 & 25 Vict, c 104, gives the High Court, under s 622 Civil Procedure Code s 15 of the

411, 101 BHAWAN KANARAS

to execution of order—The High Court has jurisdiction to direct a lower Court in what manner it

own (the High Court) decree or order shall be carried into effect by that Court, and to order that the lower Court does not pervert the order or do that

which was

order con

KARAN DOSSAMAYAN v

64. Collector refused to entertain an application by a

13

SUPREMACY OF THE COURT—continued.

3. CHARTER ACT (21 & 25 VICT., C. 104), S. 15

Whether a decree for rent, under Act X of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 21 & 25 Vict., c. 104, s. 15. *MIRJONI SINGH DEO v. TANAKATH MUKHERJEE* [1 L. R., 9 Cal., 295; 12 C. L. R., 361 L. R., 9 I. A., 174]

Acting in excess of, or refusal of, jurisdiction.—A party dissatisfied with a legitimate finding under s. 16, Act XIV of 1859, has a special remedy by a writ in a Civil Court, and cannot claim the High Court's interference under s. 15, 24 & 25 Vict., c. 104, except where the Judge has exercised a jurisdiction which he has not, or has refused to exercise a jurisdiction which he has. *DOOGA SOODHUR DEBIA v. KASHREE KANT CHUCKRABORTY* 14 W. R., 212

Order exempting debtor from liability on ground of limitation.—S. 15 of the 21 & 25 Vict., c. 104, does not enable the High Court, by way of motion, to deal with an order made by a lower Appellate Court in cases where the latter has jurisdiction, and the law declares that its order should be final. An order exempting a debtor from liability on the question of jurisdiction, even though erroneous, is an exercise of jurisdiction. *SHOWDATTREE DOSSEE v. MANTOE KANT CHOWDHURY* 19 W. R., 386

KATEE PRASAD CHOWDHURY v. KANT SOODHUR SINGAR. 12 W. R., 129

71. *Postponement of execution sale without taking security.*—Where, in a case under Bengal Act VIII of 1869, a Munsif, on a claim being preferred to property attached in execution, or having the amount of the decree deposited,—*Held* that his proceeding, though erroneous, was in a case in which he had and exercised jurisdiction, and that his decision ought not to be set aside under the 15th section of the Act 24 & 25 Vict., c. 104. IN THE MATTER OF THE PETITION OF BAGRAM [20 W. R., 10]

72. *Refusal to stay—Allegation of fraud and finding against it.*—If got a decree against *Al* in the Court of the Sudder Ameen, and in execution attached certain property of the judgment-debtor, *J*, who had a decree against the same judgment-debtor in the Court of the Principal Sudder Ameen, applied to the Court of the Sudder Ameen to stay the proceedings, on the ground that *W*'s decree had been obtained by fraud. The Sudder Ameen refused the application, *J* appealed to the Judge, who saw no ground for the imputation of fraud. *Held* (by HOBHOUSE, *J*) that the Judge's judgment was on the face of it good and in a case within his jurisdiction, and that it did not call for an exercise of the

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15

defendant for realization of costs awarded by a Court of appeal, and for refund of the amount which the plaintiff had realized from the defendant in execution of the decree of the lower Court, but which had been disallowed by the Court of appeal, and where, on appeal, the Judge held that no appeal lay under s. 1-1 of Act X of 1859,—*Held* that the High Court had power, under 21 & 25 Vict., c. 104, s. 15, to order the Deputy Collector to enforce the realization of the amount realized from the defendant in excess of the amount allowed by the Court of appeal, and also to execute that part of the decree which awarded costs to the defendant. IN THE MATTER OF THE PETITION OF GONIM KOOKMAR CHOWDHURY [2 Ind Jur., N. S., 199; 7 W. R., 520]

65. *Order of Collector giving possession, reversal of.*—Where a Collector, having passed an order for possession of a certain tenure in favour of the applicant on his purchase thereof at a sale for arrears, reversed such order at the instance of an objector who had already purchased the same at a sale under Bengal Act VIII of 1865 for arrears of rent due upon it, and had been put in possession, the High Court refused to exercise its powers under s. 16 of the Charter Act. *NANA KANT DATT DEBI v. CHANDI CHAMAN CHOWDHURY* [3 B. L. R., Ap., 65]

S. C. NARAYAN DABE v. CHUNDER CHURN CHOWDHURY 11 W. R., 512

66. *Letters Patent, Release of person imprisoned in execution of decree.*—Where, in execution of a summary decree for rent obtained under Regulation VII of 1799 in 1851 against the father of the petitioner and another, the petitioner was arrested and lodged in jail in January 1867,—*Held* by the majority of the Court (NORRIS, *J*., dissenting) that the High Court could not, under the general powers of superintendence vested in it by s. 15 of the High Courts Act or s. 16 of the Letters Patent, interfere to order the release of the petitioner. *GORAL SINGH v. COURT OF WARDS* 7 W. R., 430

67. *Assignment of Decree—Civil Procedure Code, 1859, ss. 246, 265—Duty of Judge.*—Where a judgment-creditor seeks to attach and sell a decree on the allegation that the assignment of it was not a *bond fide* conveyance, and the conveyance purports to be one of property specified in s. 265, Act VIII of 1859, it is the duty of the Judge under s. 246 to enquire whether the assignee of the decree was or was not in *bond fide* possession of the property. If the Judge inquires into the facts, no appeal lies from his order; but if he refuses an inquiry, the High Court, under its general powers of superintendence, can and ought to require the Judge to make the inquiry. *GREEN CHURN LAKHORE v. KASHRESSEE DEBIA* 8 W. R., 26

68. *Execution of decrees for rent—Act X of 1859, ss. 23, 77, and 160.—*

SUPERINTENDENCE OF HIGH COURT—continued.

3. CHARTER ACT (24 & 25 VICT, C. 104), S. 15

103. —continued.

Paper, Refec- tion of application to sue as—Civil Procedure Code, 1859, s. 304—Case where there is no appeal.—Where a decision (e.g., the rejection of an application under Act VIII of 1859, s. 304) is declared by law not to be subject to appeal, the High Court cannot interfere under 24 & 25 Vict, c. 104, s. 15. **BARU ARI v. GOKUL LAL.** 24 W. R., 62

104. *Recorder of Moulmein—Act XXI of 1863, ss. 16 and 17—Suspension of pleader.*—The High Court has, under s. 15 of 24 & 25 Vict, c. 104, general superintendence over the Court of the Recorder of Moulmein established under Act XXI of 1863. An order passed by the Recorder of Moulmein under s. 16 or 17 of Act XXI of 1863, granting or withdrawing a license to practise as a pleader in the Small Cause Courts of Moulmein, is an exercise of power which comes under the superintendence of the High Court. *IN THE MATTER OF THOMSON*

105. *Refusal of original Court to entertain application for review.*—Under s. 15 of 24 & 25 Vict, c. 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain an application to review an order refusing a petition for leave to sue in form *pauperis*, on the ground that the Court had no jurisdiction to entertain it. *IN THE MATTER OF THE PETITION OF UMASUNDARI DEBI* **15 B. L. R., Ap., 29**

106. *Review, Admission of, after prescribed time.*—The High Court refused to interfere with the order of a Court granting a review of its judgment, although the application for review was not made until three years after the date of the decree, the party who preferred the application for the review having satisfied such lower Court of the existence of just and reasonable cause for his not having preferred his application for review within ninety days. **AGONNISSA BIRRE v. SURJA KANT ACHARJI** **12 B. L. R., A. C., 181; 11 W. R., 56**

107. *Review, Admission of, after prescribed time.*—The lower Appellate Court admitted a petition for review of its judgment after a lapse of ninety days from the date of the decision without recording that just and reasonable cause for the delay had been shown. On an application under s. 15 of the Charter Act to the High Court to set aside the order of the lower Court, on the ground that that Court had no jurisdiction to entertain an application for review after a lapse of ninety days without recording that there was just and reasonable cause for the delay, the High Court refused to interfere. **ASARANNISSA BIRRE v. INAET HOSSAIN.** 5 B. L. R., 816; 13 W. R., 439

SUPERINTENDENCE OF HIGH COURT—continued.

3. CHARTER ACT (24 & 25 VICT, C. 104), S. 15

—continued.

general power of superintendence, holding that, although the Judge had exercised an original power where he had only an appellate jurisdiction, he had done so on a complaint made by the Munsif, and the petitioner, if aggrieved, had a remedy under Act VI of 1871 in an application to the Local Government. *IN THE MATTER OF FAKIR CHAND LAL* **20 W. R., 470**

100. *Dismissal of suit in absence as original plaintiff, after adding third party of plaintiff.*—*Per NORMAN, J. (SECON- KARR, J., dissenting).*—Where a Court added a third party as a plaintiff, and, in the absence of the original plaintiff, improperly dismissed the suit, it was held that the suit was still pending, and undisposed of by the lower Court as regards the plaintiff; and the lower Court was ordered, under the High Court's power of superintendence vested in it by the 24 & 25 Vict, c. 204, s. 15, to take up and try the case accordingly. **CHUNDER KANT BHUTACHARJEE v. BINDA- BUN CHUNDER MOOKERJEE** **7 W. R., 277**

S. C. IN THE MATTER OF THE PETITION OF CHUNDER KANT BHUTACHARJEE **19 W. R., 309**

101. *Erroneous order.*—Putting on the record party not a legal representative. Where a decree had been obtained against a British subject domiciled in India, who subsequently died intestate, and an order was made reviving the decree against one of his children, and ordering execution to proceed before letters of administration to his estate had been taken out, and without inquiry being made as to who were his legal personal representatives, that, although no appeal lay against the order, yet that, as it was clearly erroneous and as, under the circumstances of the case, it must lead to the greatest confusion and injury to the interests of the parties if the execution was proceeded with, the Court was justified in interfering under s. 15 of the Charter Act. **POGOSE v. CATONICK** **11 T. L. R., 3 Cal., 708; 2 C. L. R., 278**

But see **POGOSE v. AHSANULLAH** **11 T. L. R., 3 Cal., 710 note**

102. *Order substituting name of purchaser instead of plaintiff—Jurisdiction of Civil Court.*—A Civil Court is not competent to order the name of a purchaser of the rights of the plaintiff in a suit to be substituted for that of the plaintiff, or, upon the application of the party so substituted, to allow the suit to be withdrawn. Such an order, if made, is made without jurisdiction, and is not an order of that description in respect of which the Legislature intended either to give or to deny the right of appeal. But the order is one which the High Court may set aside in the exercise of the superintendence vested in it by s. 15 of 24 & 25 Vict, c. 104. **JUDOOPOOTTEE CHATTERJEE v. CHUNDER KANT BHUTACHARJEE**

SUPREMACY OF THE COURT

3 CHARTER ACT (24 & 25 VICT C 104) S 15

Order to come

into a sale which had been made by that court un-

not expedient to continue in the matter and thought it

EXERCISE OF COURT'S POWER

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Sale made pend

under Act XVII of 1873 (the Debts)

that the purchaser would purchase an empty title

Subsequently the commissioners came to an actual

binding under a 12 declaring the property to be

debt by the Government of India and their opinion

that it could not be alienated by the Rajah

In consequence of this the Court which had sold it

refused to confirm the sale. The High Court returned

to interfere under the High Court Act s 15 and

ing that it was so manifestly right and proper in the

interior of all parties to withhold confirmation of

the sale in this case that it was unnecessary to

inquire whether the order was in strict conformity

with the law or not. The High Court was

HUMAYUN KHAN MAHOMED ALI MIRZA BAHADUR

24 W R 311

into the matter

Where a Judge in such a case

aside a sale after finding material irregularity and

questioned by the High Court in the exercise of its

extraordinary jurisdiction. See *Bank of India v. Bank of England*

111

1859 s 364—Reversal of sale for irregularity

of the property of a judgment debtor were sold in execution of a

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Act

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Code, 1872, ss 250 and 622—Irregularity in sale

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13 W R, 250

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SUPREMACY OF THE COURT

3 CHARTER ACT (24 & 25 VICT C 104) S 15

Order to come

into a sale which had been made by that court un-

not expedient to continue in the matter and thought it

EXERCISE OF COURT'S POWER

108

Sale made pend

under Act XVII of 1873 (the Debts)

that the purchaser would purchase an empty title

Subsequently the commissioners came to an actual

binding under a 12 declaring the property to be

debt by the Government of India and their opinion

that it could not be alienated by the Rajah

In consequence of this the Court which had sold it

refused to confirm the sale. The High Court returned

to interfere under the High Court Act s 15 and

ing that it was so manifestly right and proper in the

interior of all parties to withhold confirmation of

the sale in this case that it was unnecessary to

inquire whether the order was in strict conformity

with the law or not. The High Court was

HUMAYUN KHAN MAHOMED ALI MIRZA BAHADUR

24 W R 311

into the matter

Where a Judge in such a case

aside a sale after finding material irregularity and

questioned by the High Court in the exercise of its

extraordinary jurisdiction. See *Bank of India v. Bank of England*

111

1859 s 364—Reversal of sale for irregularity

of the property of a judgment debtor were sold in execution of a

decree and an appeal afterwards reversed the

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S C DASTOOR & HALL

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SUPERINTENDENCE OF HIGH COURT—continued.

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15.

—continued.

rejected by the lower Court, it was held that the order of rejection could not be interfered with by the High Court under s. 15 of the High Courts Act. In the matter of the petition of Jodoo Moxee Dosssee. 11 W. R., 494.

117. *Act XI of 1865, s. 1—Interference with decision of Small Cause Court.*—The powers conferred by 24 & 25 Vict., c. 104, s. 15, and Act XI of 1865, s. 4, do not enable the High Court to interfere with the decision of a Court of Small Causes refusing an application on the part of a defendant to send for a copy of a letter which was filed in another suit, and which the defendant desired to put in as evidence. 19 W. R., 306.

118. *Order made by acting Judge and set aside by permanent incumbent.*—Where an acting Judge of a Small Cause Court had made an order which the permanent incumbent on his return considered to have been made without authority of law,—*Held* that the High Court was not competent to take up the case on a reference from the Judge, but that the party aggrieved should apply to the High Court, if he thought fit, to exercise its extraordinary powers under s. 15 of the High Courts Act. DEER CHAND v. GOVAREE. 13 W. R., 88.

119. *Cases where no special appeal lies and no question of jurisdiction arises.*—*Act XXIII of 1861, s. 27.*—Under s. 15 of 24 & 25 Vict., c. 104, the High Court will not interfere with the decision of the Courts below in cases in which a special appeal is forbidden by s. 27 of Act XXIII of 1861, and where there is no question of jurisdiction involved. In the matter of the petition of LUKHAKANT BOSE. 11 L. R., 1 Cal., 180.

S. C. KETTERI CHETTIAR v. LUKHAKANT BOSE. 124 W. R., 440.

120. *Interference by High Court in case cognizable by Small Cause Court.*—*Act XXIII of 1861, s. 27.*—In a suit cognizable by the Small Cause Court, and in which no special appeal lay to the High Court under s. 27, Act XXIII of 1861, the High Court exercised its extraordinary powers and dismissed the suit. DUTTAJI MAHTAB CHAND BAHADUR v. SHAGOR KHANDU. 5 B. L. R., App., 91.

121. *Want of jurisdiction to determine part of case.*—In a suit of Small Cause Court nature (to recover the value of produce) which had been decided upon the real issues between the parties, the High Court refused to exercise its extraordinary powers under s. 15 of the Charter, merely on the ground that the Civil Court had no jurisdiction to determine a part of the dispute, which was whether the land whose produce

SUPERINTENDENCE OF HIGH COURT—continued.

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15.

—continued.

in execution of the decree without opposition on his part, and the sale having been duly confirmed, the purchaser, who was also the decree-holder, was put into possession. A motion on application to the Court executing the decree to have the sale set aside, and his application being refused, petitioned the High Court under s. 15 of 24 & 25 Vict., c. 104, for the same relief. The High Court, however, refused to interfere, both upon the principle above stated, and likewise because the purchaser, being also the decree-holder, could not successfully oppose a suit by it to have the sale set aside. In the matter of the petition of COCHINNADE. 14 B. L. R., 330; 23 W. R., 310.

114. *Selling aside order properly made for saleable distribution of sale proceeds.*—*Claim, Order.*—A claim was dis-

allowed to certain property which had been attached in execution of a decree. The property was sold, and after satisfaction of the decree it was ordered that the surplus proceeds should be ratably distributed among other judgment-debtors who had subsequently attached. On the application of the unsuccessful claimant again preferring his claim to the property, the Principal Sudder Ameer made an order, setting aside the previous order for distribution so far as it affected some of the creditors. *Held* that the Principal Sudder Ameer had no jurisdiction to make the latter order. The High Court would therefore interfere to set it aside under its general power of superintendence. In the matter of the petition of DUTTAJI MAHTAB CHAND BAHADUR. 12 B. L. R., A. C., 217.

S. C. MAHARAJAN v. BURDWAY v. HERNALAL SEAT. 11 W. R., 54.

115. *Order giving sanction to prosecution.*—*Grant of certificate of administration to one holding under forged will.*—The application of a widow for a certificate having been opposed by a third party (A), who produced an alleged will of the deceased, the Judge ordered a widow petitioned for an inquiry into the genuineness of the will, and the Judge, after examining witnesses, considered there were sufficient grounds for investigating the charge of forgery, and directed that A should be sent to the Magistrate for that purpose. *Held* that the Judge ought not to have granted the certificate to the party who produced the will unless he was quite satisfied that the will was genuine. As the order, however, directing that A should be sent to a Magistrate was made with jurisdiction, the High Court could not interfere. In the matter of KOOZY BENAREE GUPTA. 11 W. R., 171.

116. *Rejection of security offered for stay of execution pending suit brought.*—Where the security offered by a judgment-debtor, with a view to execution against her being stayed until the decision of a suit for an account which she had brought against the decree-holder was

SUPREMACY OF THE COURT—continued.

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15

CHANDER NATH SEN, I. L. R., 2 Cal., 293, followed. BHADLEY v. JAMESON

[I. L. R., 8 Cal., 580] CHANDER GOOMAR KOY v. OMRAN CHANDER MOGGOZDAR

BAKER MADHUB GHOSH v. WOODKATTH KOY CHOWDHURY

SHREEMATI DUTT v. UNKODA CHURN DUTT [23 W. R., Cr., 34]

136. Order of Magistrate under s. 518, Criminal Procedure Code, 1872.

The High Court, in the exercise of the jurisdiction given to it by s. 15 of the Charter Act, issued a rule upon the opposite party to show cause why an order made by a Magistrate which was complained of should not be set aside for want of jurisdiction, although the matter had already been brought to the notice of the Court on a reference made by the Sessions Judge. KATI NARAYAN ROY CHOWDHURY v. APOOT GURPOOR KHAM [22 W. R., Cr., 24]

137. Criminal Procedure Code (Act X of 1852), s. 144—Order to abstain from certain act.—A Deputy Commissioner passed an order under s. 14 of the Code of Criminal Procedure, prohibiting a person from collecting any rent or attempting to collect rent, either herself or through any of her officers or servants, from the raiyats of two specified pergunnahs; and also from affecting any sale or putting in hand any transaction with regard to standing trees or collected timbers in an estate, or erecting any adda or kachari in such pergunnahs for a period of two months. Upon an application to set aside such order, *Held* that the High Court had jurisdiction under s. 15 of the Charter Act to set it aside if it were made without jurisdiction. ABAYESWARAN DUTT v. SINDRASWARAN DUTT [I. L. R., 16 Cal., 80]

138. Criminal Procedure Code (Act V of 1898), ss. 145, 435—Power of local Legislature—Power of revision by High Court—Order concerning a ferry purporting to be made under s. 145.—The local Legislature has power to overrule a statutory power conferred on the High Court; but this was not the object and result of the legislation expressed in s. 435 of the Criminal Procedure Code of 1898. *Impresso* v. BURAH, I. L. R., 4 Cal., 172; I. L. R., 5 I. A., 178, referred to. The terms of s. 435 mean that orders under the exempted sections mentioned in cl. (3) must have been passed with jurisdiction. If such orders are challenged as made without jurisdiction, the mere fact of their purporting to be passed within those sections so as to deprive the exercise of powers by the High Court under s. 15 of the Charter Act. *Abayeswaran Dutt v. Sindraswaran Dutt*, I. L. R., 16 Cal., 80; *Charles v. Stephen*, I. L. R., 19 Cal., 127; *Roop*

SUPREMACY OF THE COURT—continued.

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15

Order of District Charge—Presidency Magistrate's Act (I of 1876), s. 108—Case in which there is no appeal.—The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate is that laid down in s. 108 of Act IV of 1877; and as by that section there is no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain under the Courts extraordinary powers that which he might obtain had he a right of appeal. *In the matter of Pooxa Churn Pat* [I. L. R., 7 Cal., 447]

139. Order of District Charge—Presidency Magistrate's Act (I of 1876), s. 108—Case in which there is no appeal.—The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate is that laid down in s. 108 of Act IV of 1877; and as by that section there is no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain under the Courts extraordinary powers that which he might obtain had he a right of appeal. *In the matter of Pooxa Churn Pat* [I. L. R., 7 Cal., 447]

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SUPERINTENDENCE OF HIGH COURT—continued

3. CHARTER ACT (21 & 25 VICT. C. 101), s. 15

—continued

MATRONSAT CHACKERBORTY

[9 H. L. R., 364; 17 W. R., Cr., 56

a Court subject to the control of the High Court under s. 15, 21 & 25 VICT. C. 101. IN RE GOVERNMENT OF BENGAL QUEEN v. AKBER KHAN

[7 B. L. R., 250 note; 15 W. R., Cr., 60

Order by Judge

of High Court in its original criminal jurisdiction

—Where an application was made to the Judge

sitting on the original side of the High Court to

transfer a case from Patna to the exercise of the

extraordinary jurisdiction of the High Court and

the application was adjourned, and an order made

calling on the Government to show cause why it

should not be removed, the High Court on the appli-

cate said, on a petition setting forth that the order

was without jurisdiction, as the rules of the High

Court had appointed a particular Bench to hear cases

from Patna, refused to interfere. IN RE GOVERN-

MENT OF BENGAL QUEEN v. AKBER KHAN

[7 B. L. R., 244 note

Order of Magis-

trate for warrant without jurisdiction—The High

Court has power under its general powers of superin-

tendence to quash an order made by a Magistrate

without jurisdiction for the issue of a warrant

IN THE MATTER OF BAYKA BIRANI GHOSH

[3 B. L. R., A Cr., 17; 11 W. R., 26

Power of High

Court to revise an order as to sanction under s. 157

of the Criminal Procedure Code—Criminal Proce-

dure Code (Act V of 1898), s. 197 and s. 489—A

pleader applied to the Chief Presidency Magistrate

for sanction under s. 197 of the Criminal Procedure

Code to prosecute an Honorary Magistrate for using

insulting and defamatory language towards him in the

course of the trial of a case and sanction was

refused. On application to the High Court, —Held,

under the revisional powers conferred by the Crimi-

nal Procedure Code, the High Court has no authority

to interfere with an order made by a subordinate

Court granting or refusing sanction under s. 197 of

the Code, but it has sufficient authority for that pur-

pose under s. 15 of the Charter Act (21 & 25 VICT.

C. 101), s. 25 VICT. C. 101, to set aside the order of

SUPERINTENDENCE OF HIGH COURT—continued

3. CHARTER ACT (21 & 25 VICT. C. 101), s. 15

—continued

Loal Das v. Manook, 8 C. W. N., 572, and Queen-
Empress v. Pratul Chander Ghose, J. L. R., 25

Cale, 552, following. HENDRILSON NARAYAN SINGH

[J. L. R., 26 Cale, 168

8 C. W. N., 49

Criminal Pro-

made parties and not the tenants. *Hid* (Akber

Ali and BAKAR, J.) that the tenants were neces-

sary parties to the proceedings, and the omission to

make them parties went to the root of the case and

was an illegal jurisdiction which would

justify the High Court in setting aside the order

PRINCE, J.—The omission to join the tenants could

High Court's powers are under the Charter Act, and

these could be exercised only in respect of jurisdic-

tion Where a Magistrate recorded proceedings

under s. 145 of the Code of Criminal Procedure and

his successor on the same materials revised those pro-

ceedings, the High Court, in exercising its revisional

power, is not bound to set aside the order of the

Magistrate, but it may do so if it is satisfied that the

order is manifestly erroneous. *Hid* (Akber

Ali and BAKAR, J.) that it was an abuse of jurisdic-

tion to interfere with the order of the Magistrate

under the Charter Act, but it was an abuse of jurisdic-

tion to interfere with the order of the Magistrate

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SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622

—continued.

149. On the question whether the High Court should refrain from exercising its powers under s. 622 by reason of the long time which had elapsed from the date of the decree,—*Held* that the petitioner was not fairly chargeable with laches. *BALAKRISHNAN v. SHEO JAYAN LAL* [I. L. R., 6 ALL., 125]

150. *Without application by a party to suit*.—A High Court can interfere under s. 622 of the Code of Civil Procedure without an application made to it by a party to the suit. *ANTHONY v. DUPONT* [I. L. R., 4 Mad., 217]

151. *Interference without application by party to suit*.—Reference from District Judge.—It is only on the application of a party interested that the High Court can act as a Court of revision under s. 622 of the Civil Procedure Code. Accordingly, where a District Judge had acted without jurisdiction in setting aside on appeal certain orders made by him, brought the matter to the knowledge of the District Judge, who took the same view, and the latter referred the case to the High Court under that section, it was held that the Court had no power to interfere. *MAHOMED FORZ CHOWDHURY v. GUTTOR DAS* [7 C. L. R., 181]

152. *Review of order of lower Court*.—*Power of High Court, on the application of a third party*.—Original order passed for delivery of possession to auction-purchaser—*Dispossession of auction-purchaser by a claimant*.—*Order for registration of name of claimant*.—*Jurisdiction of Court to reopen execution proceedings*.—On a dispute arising between two contending parties, A and B, for registration of their names, a reference was made to the District Judge under s. 55 of the Land Registration Act, and a decision was passed in favour of A, the petitioner, who was put in possession of the property notwithstanding the objection of one C, the opposite party, that he held possession of the village as a permanent tenant-holder, having acquired a title by auction-purchase in execution of a mortgage decree. No steps were taken by C to obtain any recognition of his title from the District Judge, but some time after he applied to the Subordinate Judge for an amendment of his sale certificate, and having obtained an order of the Court re-opening the execution proceedings he applied for a fresh writ of possession in pursuance of the amended sale certificate. The Subordinate Judge issued a fresh writ of possession but A resisted the execution of that writ and possession could not be given without complaining of the resistance to the Subordinate Judge. C applied for and obtained a fresh writ for possession. Before any action could be taken upon that writ, the petitioner presented an application to the Subordinate Judge representing his right in and possession of the property, but the Subordinate Judge declined to take any action upon it.

SUPERINTENDENCE OF HIGH COURT—continued.

3. CHARTER ACT (21 & 24 VICT., C. 104), S. 15

—continued.

s. 15 of the Charter Act (24 & 25 VICT., c. 104). That section has always been interpreted in a very extended meaning so as to give ample powers of superintendence, that is to say, powers of revision over proceedings of subordinate Courts. But the High Court has no power under the Code of Criminal Procedure to interfere in revision with an order of dismissal passed by a Presidency Magistrate. *Colville v. Krysto Kishore Bose*, I. L. R., 26 Cal., 746, dissented from. *Opoorba Kumar Sett v. Probod Kumar Dass*, I. C. W. N., 49, referred to. A Presidency Magistrate acting under s. 203 of the Criminal Procedure Code dismissed a complaint on the report of the police without examining the complaint and without finding that there was no sufficient ground for proceeding. The High Court acting under s. 15 of the Charter Act ordered a further inquiry to be made into the matter of the complaint. *CHAROORBA DASS v. BARKANDA NATH MOZAMDAR* [I. L. R., 27 Cal., 126]

4. CIVIL PROCEDURE CODE, S. 622. *Order made by High Court, Application to review*.—S. 622 of the Civil Procedure Code (XIV of 1882) does not apply to a case where the order, of which review is sought, is made by the High Court. The Court referred to in s. 622 is a Court other than the High Court. In re *PREMJIT THIRUMDAS* [I. L. R., 17 Bom., 514]

147. *Application where it was found an appeal lay*.—*Application treated as appeal*.—Where an application was made for the exercise of its superintendence under s. 622 of the Civil Procedure Code, and the Court found that an appeal lay in the case, and that therefore it ought not to exercise such superintendence, the application from its value lying to the High Court and the application under s. 622 having been made before expiry of the time allowed for an appeal) on the proper Court-fees being paid. *Mohammed Wahidin v. SRIDHARAY SOMAYYAPAD v. PURAMATHAN SOUJAYA-Hakimian*, I. L. R., 25 Cal., 757, referred to.

148. *Delay in moving Court*.—Where an auction-purchaser applied to the High Court to set aside, in the exercise of its powers under s. 622 of the Civil Procedure Code, an order setting aside a sale of immovable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seven months after the date of such order, the Court, having regard to the time that had elapsed before such application was made, refused to interfere. In the *MATTER OF THE PETITION OF DURGA PRASAD* [I. L. R., 4 ALL., 154]

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622

—continued.

the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the High Court under s. 622 of the Code. *WILLIAMS v. BROWN*. I. L. R., 8 All., 108

156. Order amending Civil Procedure Code, 1852—

High Court's powers of revision.—A District Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say that he accepted the appeal, and that the decree as it stood failed to give effect to the judgment. *PER ODEYARD, J.*—That the order passed by the Judge under s. 206 could not be made the subject of revision by the High Court under s. 622 of the Civil Procedure Code, because there was an appeal from the amended decree, which became the decree in the suit, and superseded the original decree. *PER MAHMOOD, J.*—That an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s. 588. Also that, in saying that by "dismissed" his predecessor meant "decree," the Judge had altered the decree in a manner not warranted by the terms of s. 206; that he had therefore exercised his jurisdiction "illegally" and with material irregularity," within the meaning of s. 622 of the Code; and that the Court was consequently competent to revise his order. *RAGHUNATH DAS v. RAJ KUMAR, I. L. R., 2 All., 276*, referred to. *SURTA v. GANGA*. I. L. R., 7 All., 411

S. C. on appeal under the Letters Patent reversing the judgment of ODEYARD, J., and affirming that of MAHMOOD, J. *SURTA v. GANGA*

[I. L. R., 7 All., 875

157.

Civil Procedure Code, s. 206—Order amending decree in respect of Court-fee in pre-emption suit.—An order as to costs contained in a decree for pre-emption directed that the plaintiff's fees should be calculated with reference to the value of the claim as set forth in the plaint. Subsequently the Court, professing to act under s. 206 of the Civil Procedure Code, passed an order directing the amendment of the decree by calculating the plaintiff's fees upon the actual value of the property. *HELD PER ODEYARD, J.*—When an original decree is amended under s. 206 of the Civil Procedure Code, it is amended, from the decree in the suit; and an appeal therefrom lies from it under the provisions of s. 540, when the validity of the amendment can be questioned. The matter of amendment a decree under s. 206 does not by itself constitute a "case" within the meaning of s. 622 of the Civil Procedure Code, but forms part of the proceedings

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622

—continued.

in the suit in which the decree is made. *HELD* therefore, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil Procedure Code, the High Court had no power to revise such amendment under s. 622 of the Code. Such an order therefore can be revised by the High Court under s. 622. The judgment of ODEYARD, J., reversed, and that of MAHMOOD, J., affirmed. *RAGHUNATH DAS v. RAJ KUMAR*. I. L. R., 2 All., 276

Held on appeal under the Letters Patent that the alteration of the decree was improper, and was not an amendment of the kind authorized by s. 206 of the Civil Procedure Code. An order passed under s. 206 amending a decree is a separate adjudication, and is not merely a part of the original decree, and such an order is not appealable under s. 588 of the Code. Such an order therefore can be revised by the High Court under s. 622. The judgment of ODEYARD, J., reversed, and that of MAHMOOD, J., affirmed. *RAGHUNATH DAS v. RAJ KUMAR*. I. L. R., 2 All., 276

158. *Civil Procedure Code, s. 206—Amendment of decree—Almsif acting illegally but in exercise of jurisdiction.*—The holder of a decree passed in a suit on a hypothecation-bond applied under the Civil Procedure Code, s. 206, to have the decree amended by bringing the description of the land contained therein into accordance with that contained in the hypothecation-bond, and the Court made an order accordingly. On a revision petition preferred under the Civil Procedure Code, s. 622, by the judgment-debtor, *HELD* (reversing the judgment of FAKIR, J., but on different reasoning by the two learned Judges constituting the Court) that the High Court had no power to interfere on revision. *NARAYANASAMI v. NATASA*. I. L. R., 16 Mad., 424

159. *Civil Procedure Code, 1882, s. 44—Order refusing leave to join claims—Rejection of plaint.*—In a plaint filed in the Court of a Subordinate Judge, the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave, under s. 44, rule (a), of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits for recovery of the house and the grain, respectively, in the Court of the Munsif. *HELD* that the Subordinate Judge's order was substantially an order rejecting the plaint, on the ground that the plaintiff had joined a cause of action with a suit for recovery of immovable property; that, although this might have been a misapplication of s. 44, rule (a), of the Code, its effect was to reject the plaint; that such an order was a decree with reference to the definition in s. 2, and was appealable as such to the District Judge, and that therefore a second appeal lay in the case to the High Court, and that

Court was not competent to interfere in revision under s. 622. *BANDHAN SINGH v. SOHAN*

L. T. R. 8 ALL. 181
Case in which

no appeal lies—Calling for record in case—*Pir*

case as a second appeal under Ch. XIII of that Act. *PER STUART, C.J.*—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper in the matter or the revision or mandamus.

L. T. R. 3 ALL. 203
Case in which

HOLD that inasmuch as an appeal lay, under s. 558 (cl. b), from the order of the Munsif the Court ought not to interfere under s. 622. *RAJ KUMAR ROY v. NAIK JAY DASS*

6 C. L. R. 234

163. Objection to attachment of property—Objection allowed—Costs—*Asst. to establish right—Appar—Refund of cost—Civil Procedure Code, 1852, ss. 244, 290.*

165—An objection to the attachment of property attached in execution of a decree was allowed the decree-holder being ordered to pay the costs of the

reference to s. 280 an appeal was barred by s. 233 the Civil Procedure Code. In the matter of the revision or mandamus.

L. T. R. 6 ALL. 21
e. HADEI FASAB

Procedure PUGANIK HAVTAN v. VOLDIVA HAVTAN

Civil Procedure Code VAKA VIKRAMA v. MATHURAN KUMAR KUMAR NARAYAN

166 Order setting aside award for misconduct of arbitrator—in order under s. 521 of the Civil Procedure Code setting aside an award, made on a reference to arbitration in the course of a suit, under Ch. XVIII of the Code, on the ground of the arbitrator's misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s. 622 of the Code.

L. T. R. 6 ALL. 283

167. Application—Award—Error of procedure—Relief refused on equitable grounds—*R. M.*, party to a suit, having authorized his agent to conduct the suit, the agent consented to the case being referred to arbitration by

L. T. R. 9 ALL. 476

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622

—continued.

xx. 130, 387—*Interlocutory orders*.—Under s. 622 of the Code of Civil Procedure, interlocutory orders passed under s. 367, refusing applications for the issue of a commission to examine witnesses, or under s. 130, directing the production of documents, cannot be revised. *In re Nizam or Hyderabad* [I. L. R., 9 Mad., 258]

172.

Revision of—Order misinterpreting decree.—Where in a case of the execution of a decree in which no second appeal lay to the High Court, the Appellate Court held, on the construction of the decree, that it awarded interest on the principal amount of the decree, the High Court, under s. 622 of Act X of 1877, holding that the Appellate Court had misconstrued the decree, and that the decree did not award such interest, modified the order of the Appellate Court accordingly. *In the matter of the petition of Mynamad v. Husain* [I. L. R., 3 All., 203]

173.

Decree—Order regarding refusal to set aside ex-parte decree.—After a decree had been made *ex-parte*, the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that no appeal lay, nor would the Court interfere under s. 622 of the Civil Procedure Code. *Ambash Chander Moosam v. Mavris* [I. L. R., 8 Cal., 832]

174.

Interference with exercise of—Collector—Hereditary Offices Act (Bomb.) III of 1874, s. 10—Collector's certificate.—The Collector, when granting a certificate under s. 10 of the Bombay Hereditary Offices Act (III of 1874), exercises a judicial function, and is subject to the supervision of the High Court; but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard or wanton perversion of the law on his part. *Collector of Thana v. Brahmachari Mavady Surati* [I. L. R., 8 Bom., 264]

175.

Suit for arrears of rent—Decision of Collector on appeal from Assistant Collector—N. W. P. Rent Act (XII of 1881).—The High Court has no power to revise, under s. 622 of the Civil Procedure Code, an order passed by a Collector under s. 188 of the N. W. P. Rent Act (XII of 1881) on appeal from an Assistant Collector of the second class. *Hur Pershad v. Lala, 3 N. W., 60*, distinguished. *Ram Dayal v. Ramadhin* [I. L. R., 12 All., 198]

176.

Interference with exercise of—Refusal to grant certificate of sale under Madras Rent Recovery Act—Civil Procedure Code, 1882, s. 4—A sale of the tenant's interest in certain land having taken place under ss. 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue a sale certificate to the purchaser, on the ground that the sale

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622

—continued.

the Court. The arbitration was carried on to the knowledge and with the assent of H. M. On an application by H. M. under s. 622 of the Code of Civil Procedure, to set aside the award made by the arbitrator, on the grounds (1) that his phrase had not been authorized in writing, as required by s. 506 of the Code, to apply for arbitration; and (2) that he himself had not consented to the reference. *Held* that, under the circumstances, H. M. was not entitled to relief. *Ussamah v. Chittam* [I. L. R., 9 Mad., 451]

189.

Application to the award, Objection to—Decree on award, Finality of—Private arbitration—Revisional powers of High Court—Jurisdiction—Civil Procedure Code (Act XII of 1882), ss. 520, 521, 525, 526, and 622.—Certain disputes between parties were referred under a written agreement to an arbitrator, who, in due course, made his award. The plaintiff then applied to the Subordinate Judge to have the award filed in Court under the provisions of s. 622 of the Code of Civil Procedure. The defendant came in and objected to the award on the following grounds: (1) That the value of the property in suit was Rs. 500 only, and therefore that the application should have been made in the District Court and not in that of the Subordinate Judge. (2) That the agreement of submission was vague and indefinite, and did not clearly set out the matters in dispute. The Subordinate Judge overruled the objection without taking any evidence, and directed the award to be filed and a decree to be passed thereon. The plaintiff appealed. The defendant contended that no appeal lay, and that, if it did, it lay to the District Judge, and not to the High Court. *Held* that, assuming that on a proceeding under ss. 525 and 526 the Court has power to consider such objections as are mentioned in ss. 520 and 521, the above objections did not fall under either section, but that the Subordinate Judge, before entertaining the application, was bound to satisfy himself that he had jurisdiction to entertain it, and for that purpose to take evidence regarding the value of the property; and that, even if no appeal lay, the High Court could interfere under its revisional powers, because the Subordinate Judge had acted in the exercise of his jurisdiction illegally in assuming jurisdiction without taking such evidence. *Bhadrassuri Pershad Singh v. Jankar Pershad Singh*

[I. L. R., 16 Cal., 482]

170.

Attachment—Power to set aside order for attachment by another Court.—No Court, other than a Court of appeal or a High Court acting under s. 622 of the Code of Civil Procedure, can discharge an order of attachment issued by another Court. *Kovashneri Ilati Naraman v. Kovashneri Ilati Naraman* [I. L. R., 4 Mad., 131]

171.

Order refusing issue of—Civil Procedure Code, Commissions

SUPERINTENDENCE OF HIGH

COURT—continued
4 CIVIL PROCEDURE CODE, S 622

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Had been irregularly conducted *Held* that the High Deputy Collector under a 623 of the Code of Civil Procedure *Veli Prista Mima HAVTHAN v* Mordin Pabana HAVTHAN

[I L R, 11 Mad, 332

177 Madras Hest Recovery Act VIII of 1865, s 10

Bent Recovery Act was evicted in pursuance of an order made under a 10 That order having been reversed on appeal, he applied to be replaced in possession, but the Sub Collector dismissed that application *Held* that the High Court could not interfere in revision under the Civil Procedure Code, s 622 *AYAKADI v SHANIVAI FORAN*

[I L R, 16 Mad, 451

176 Madras Hest Recovery Act VIII of 1865, s 76 —

Orders passed by a Collector under the Madras Hest Recovery Act are not open to revision under a 623 of the Civil Procedure Code *Veli Prista Mima v Mordin Pabana*, I L R, 9 Mad, 552, followed

VERKATANKASATHA NAIDU v SHANIVAI

[I L R, 17 Mad, 298

179. Discretion, Exercise of—Admission by District

CHUNKASANI I L R, 7 Mad, 684

180 Error in law

Civil Procedure Code, 1852, s 52—*Interpleader suit, Application to be made a party to—Power of High Court on revision—Errors in construction of an Act is not a ground for relief under a 623 of the Civil Procedure Code* *M J instituted an interpleader suit against two rival claimants, A and B in respect of a sum of Rs 20,000 B subjoined, and claimed a portion of the money and applied to be made a party to the suit, but was opposed by A and B The Subordinate Judge refused the application, on the ground that, though it was probably made under a 52 of the Civil Procedure*

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SUPERINTENDENCE OF HIGH

COURT—continued
4 CIVIL PROCEDURE CODE, S 623

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BAKAM v KOORJAN BECK alias DATTI SHANIVAI I L R, 13 Cal, 90

181 Error in law

182 Error of law

Application to bring decree into conformity with judgment—A Small Cause Court rejected an application made under a 206 of the Code of Civil Procedure to bring a decree into conformity with the judgment, on the ground that a former application had been dismissed for default and the petitioner was bound to

183 Court a doing

Small Cause Court under erroneous impression it was under a contract—A Small Cause Court which had jurisdiction under Act XI of 1805 to found on contract, erroneously assumed that a sub-tenant, by entering on land with notice that his lease was bound to pay rent to the landlord, became liable by an implied contract to pay the rent to the landlord, and passed a decree against the sub-tenant for the rent in arrears. *Held* that, under a 623 of the Code of Civil Procedure, the High Court had power to set aside the decree. *Amir Hassan Khan v Shoa Bahad Singh*, I L R, 11 Cal, 6, discussed and explained. *Muraria Bhai v Siraji Kora*

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SUPERINTENDENCE OF HIGH COURT—continued.

4 CIVIL PROCEDURE CODE, S 622 —continued

the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so applied to the Collector to amend the certificate. The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree. The Court

the purchaser had a remedy by bringing a regular suit the matter did not fall within s 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision. *Shivanathay v Joma Kashinath, I L R, 7 Bom, 311, and Amir Hassan Khan v Sheo Baksh Singh, I L R, 11 Cal, 6, referred to. SUNDAR DAS v MANSA RAM, I L R, 7 All, 407*

192 — *Jurisdiction.*
Interference with exercise of—Limitation—A Court which admits an application to set aside a

action may therefore be made the subject of revision by the High Court under that section. *Amir Hassan Khan v. Sheo Baksh Singh, I L R, 11 Cal, 6, and Magni Ram v. Jiva Lall, I L R, 7 All, 336, commented on by MAHMOOD, J. Per MAHMOOD, J.—The term "jurisdiction" as used by their Lordships of the Privy Council in *Amir Hassan Khan v. Sheo Baksh Singh* must be understood in its broad legal sense signifying the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by the law upon the judicial authority. *HAN PRASAD v JAPAN ALI, I L R, 7 All, 345**

193 — *Erroneous decision on point of limitation—The fact that a Court having power to decide whether or not a certain matter was barred by limitation wrongly decided that it was not barred, and proceeded to deal with it, affords no ground for revision under s 622 of the Code of Civil Procedure. Amir Hassan Khan v. Sheo Baksh Singh, I L R, 11 Cal, 6. I L R, 11 A, 237, and Sarman Lal v Khandan, I L R, 17 All, 422, referred to. SUNDAR SIKH v DARY SHANAR, I L R, 20 All, 78*

SUPERINTENDENCE OF HIGH COURT—continued

4. CIVIL PROCEDURE CODE, S 622 —continued

Semble—In dealing with a case under s 622 the High Court can look into the evidence and itself investigate the facts. KAILASH CHANDRA HALDAR v HISSOVATH PARAMANIO, I C. W. N., 87

195 — *Jurisdiction.*
Question not relating to—Alleged errors in decision of suit for pre-emption—In a suit to enforce the right of pre-emption in respect of a usufructuary mortgage of immovable property, the plaintiffs alleged that the consideration money was less than that stated in the mortgage deed. The Court of first instance gave the plaintiffs a decree for possession of the property, on payment of an amount less than that mentioned in the deed, and this decree was

tion whether, such grounds not being grounds of

196. — *Jurisdiction.*
Interference with exercise of—Second class Subordinate Judge—Subject matter of suit under Rs 5000 and within jurisdiction—Amount of decree with accumulations of interest exceeding Rs 5000—Application for execution—Second appeal—The plaintiffs obtained a decree in the Court of a second class Subordinate Judge for a sum less than Rs 5000 which with accumulations of interest subsequently exceeded Rs 5000. The plaintiffs applied in execution to recover the total amount. The application was rejected by the Subordinate Judge, on the ground that the Court had no jurisdiction under s 24 of Act XIV of 1869. On appeal the District Judge made an order confirming the decision of the Subordinate Judge. The plaintiffs filed a second appeal in the High Court. Held that no second appeal lay to the High Court from such an order; but as the Subordinate Judge was wrong in refusing to exercise his jurisdiction, the High Court would give relief under the extraordinary jurisdiction conferred by s 622 of the Civil Procedure Code (Act XIV of 1832). The subject matter of the suit was within the jurisdiction of the subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit in all such matters in the suit as were within his cognizance, amongst which were matters in execution in the suit. The mere circumstance that the amount

SUPERINTENDENCE OF COURT—*continued.*

4. CIVIL PROCEDURE CODE, —*continued.*

facts, and before evidence was gone into the damages were assessable as of the day on which it was admitted the market was high or higher than the contract rate. On this ruling, without going into their accepted judgment for nominal damages, the Full Court decided against the plaintiff, and made out a rule for a new trial, on the ground that the Judge was in error in assigning the date of the contract as the 31st May, and not the 31st April, as the date on which the question of damages arose. On the argument, the Full Court decided against the plaintiff on this point, which they did not decide on the other, but on another point also, that the plaintiffs ought to have given notice of *L M & Co.*'s refusal to give delivery on the 25th April, and, not having done so, they moved the High Court under s. 622 of the Civil Procedure Code (Act XIV of 1882) to set aside the order of the Full Court of the Small Causes Court, as one which at that stage of the proceedings

SUPERINTENDENCE OF HIGH COURT—continued.

4 CIVIL PROCEDURE CODE, S 622 —continued

the Collector gave the purchaser a certificate of the sale. Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in

Jud. e for possession of the amount claimed by him, and the Subordinate Judge again rejected the

the purchaser had a remedy by bringing a regular suit, the matter did not fall within s 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision *Shivaratnay v Joma Kashinath, 1 I R, 7 Bom. 341*, and *Amir Hassan Khan v Shao Baksh Singh, 1 I R, 11 Calc, 6*, referred to *SUNDAR DAS v MANVA RAM I L R, 7 All, 407*

192. — Jurisdiction. Interference with exercise of—Limitation—A Court which admits an application to set aside a

action may therefore be made the subject of revision by the High Court under that section *Amir Hassan Khan v Shao Baksh Singh, 1 I R, 11 Calc, 6*, and *Magni Ram v Jiva Lal, 1 I R, 7 All, 388*, commented on by *MAHMOOD, J Per MAHMOOD, J*—The term "jurisdiction" as used by their Lordships of the Privy Council in *Amir Hassan Khan v Shao Baksh Singh* must be understood in its broad legal sense signifying the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by the law upon the judicial authority *HAR PRASAD v JARAN ALI I L R, 7 All, 345*

193. — Erroneous decision on point of limitation—The fact that a Court having power to decide whether or not a certain matter was barred by limitation wrongly decided that it was not barred, and proceeded to deal with it, affords no ground for revision under s 622 of the Code of Civil Procedure. *Amir Hassan Khan v Shao Baksh Singh, 1 I R, 11 Calc, 6 I R, 11 A, 237*, and *Sarman Lal v Kamban, 1 I R, 17 All 422*, referred to *SUNDAR SIKOH v DORU SHANKAR I L R, 20 All, 78*

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interfere under s 622 of the Civil Procedure Code

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, S 622 —continued

Semble—In dealing with a case under s 622 the High Court can look into the evidence and itself investigate the facts. *KAILASH CHANDRA HALDAR v BISBOVATH PARAMANIO 1 C W. N, 67*

195. — Jurisdiction. Question not relating to—Alleged errors in decision of suit for pre-emption—In a suit to enforce the right of pre-emption in respect of a usufructuary mortgage of immovable property, the plaintiffs alleged that the consideration money was less than that stated in the mortgage-deed. The Court of first instance gave the plaintiffs a decree for possession

as not paid (ii) Because the lower Court has not considered the evidence of the appellants (iii) Because the finding of the lower Court is based on conjecture. Held, on the question whether such grounds not being grounds on which a second appeal is allowed by Ch XLII of the Civil Procedure Code, the appeal should not proceed rather under Ch XLVI, s 622 of that Code, that the appeal could not proceed under s 622 of the Civil Procedure Code in consequence of the decision of the Privy Council in *Amir Hassan Khan v Shao Baksh Singh, 1 I R, 11 Calc, 6*, that only questions relating to the jurisdiction of the Court could be entertained under that section *MAHDI RAM v JIVA LAL I L R, 7 All, 388*

196. — Jurisdiction. Interference with exercise of—Second class Subordinate Judge—Subject matter of suit under Rs 5000 and within jurisdiction—Amount of decree

that the court had no jurisdiction under s 24 of Act XIV of 1869. On appeal the District Judge made an order. Subordinate Judge in the High Co to the High C Subordinate Judge was wrong in refusing to exercise his jurisdiction, the High Court would give relief under the extraordinary jurisdiction conferred by s 622 of the Civil Procedure Code (Act XIV of 1869)

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

no cause of action against *V* or *S*, but, if at all, against *C*, and dismissed the suit as against *V*. The Subordinate Judge also held that he had no jurisdiction to interfere with the decree against *S*, and saw no reason to interfere with the decree against *C*. *S* appealed against this decree. *Held* that, even if *S* was not entitled to appeal in order to have the decree against him set aside, the error of the Subordinate Judge could be corrected under s. 622 of the Code of Civil Procedure by a direction to exercise the discretionary power given by s. 544 of the said Code. *SESHADRI v. KRISHNAN*. I. L. R., 8 Mad., 192

209. ————— *Jurisdiction, Interference with exercise of—Act XL of 1858 (Bengal Minors Act), s. 3—Refusal to admit person with certificate of administration to defend suit on behalf of minor.*—Under s. 3 of the Bengal Minors Act (XL of 1858), the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act, to defend a suit on the minor's behalf, as guardian of such minor. Where a Subordinate Judge had so acted,—*Held* that the High Court has no power to revise his order under s. 622 of the Civil Procedure Code. *BALDEO DAS v. GOBIND SHANKAR*. I. L. R., 7 All., 914

210. ————— *Jurisdiction, Interference with exercise of—Decree, Refusal to amend.*—Where a Court improperly refused to amend a decree which was at variance with the judgment,—*Held* that in so acting the Court had acted in the exercise of its jurisdiction illegally and with material irregularity within the meaning of s. 622 of the Civil Procedure Code, and its order was consequently subject to revision under that section. *BALMAKUND v. SHEOJATAN LAZ*. I. L. R., 6 All., 125

211. ————— *Jurisdiction, Interference with exercise of—Material irregularity affecting merits of case.*—The words "a material irregularity" in s. 622 of the Code of Civil Procedure include an irregularity of procedure materially affecting the merits of the case. An application of a section of the Code to a case to which it does not apply is a material irregularity within the meaning of the section. *Magni Ram v. Jiwa Lal*, I. L. R., 7 All., 336, observed on. *SEW BUX BOGLA v. SHIB CHUNDER SEN*. I. L. R., 13 Calc., 225

212. ————— *Jurisdiction, Interference with exercise of—"Illegality"—"Material irregularity."*—A suit was instituted in the Court of a Munsif to recover from the defendants a sum of Rs. 49, being the amount due under a bond, and which the plaintiff alleged had been recovered on her account by one of the defendants from the obligor. The Munsif, being of opinion that the determination of the plaintiff's right to the bond involved the question of her heirship to the estate of a certain deceased person, and that consequently the case before him raised a question affecting the title to property exceeding Rs. 1,000 in value, held that he had no jurisdiction to entertain the suit, and accordingly

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

returned the plaint for presentation to the proper Court under s. 57 of the Civil Procedure Code. *Held* by the Full Bench, that the Munsif had acted upon an erroneous view, as the only subject-matter of the suit was the Rs. 49; that he had consequently failed to exercise a jurisdiction vested in him, and the High Court was therefore competent to revise his order under s. 622 of the Civil Procedure Code. The result of *Amir Hassan v. Sheo Baksh Singh*, I. L. R., 11 Calc., 6, and *Magni Ram v. Jiwa Lal*, I. L. R., 7 All., 336, is that the questions to which s. 622 of the Civil Procedure Code applies are questions of jurisdiction only. The meaning of the decision of the Privy Council in the former case is that, if the Court has jurisdiction to hear and determine a suit, it has jurisdiction to hear and determine all questions which arise in it, either of fact or law, and that the High Court has no jurisdiction under s. 622 to inquire into the correctness of its view of the law, or the soundness of its findings as to facts; but that, when no appeal is provided, its decision on questions of both kinds is final. *Per* STRAIGHT and TYRRELL, JJ.—Clauses (a) and (b) of s. 584, specifying the grounds on which a second appeal lies to the High Court, embody what s. 622 refers to in the word "illegally," that is to say, to cases where the Court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law or usage having the force of law, or failed to determine some material issue of law or usage. Cl. (c) of s. 584 indicates the meaning of the words "material irregularity" in s. 622,—i.e., some material irregularity in procedure, "which may possibly have produced error or defect in the decision of the case upon the merits." *Muhammad v. Husain*, I. L. R., 3 All., 203, referred to. *BADAMI KUAR v. DINU RAI*

[I. L. R., 8 All., 111]

213. ————— *Jurisdiction, Interference with exercise of—Meaning of "jurisdiction"—Amendment of decree—Civil Procedure Code, s. 206—Act XV of 1877, sch. II, No. 178.*—In execution of a decree for partition of immoveable property passed in 1872, a dispute arose as to the execution in reference to portion of the property, and in 1881 it was finally decided that the decree was defective in its description of the property, and therefore incapable of execution. In May 1885, on application by the decree-holder, the Court passed an order amending the decree, the amendment having reference to an arithmetical error. The judgment-debtor applied to the High Court for revision of this order, on the grounds that the amendment of the decree was barred by limitation, and that the decree itself being barred by limitation and finally pronounced to be incapable of execution, the Court had acted beyond its jurisdiction in amending it. *Held* that the application for revision must be rejected. *Per* OLDFIELD, J., that the High Court had no power to entertain the application under s. 622 of the Civil Procedure Code with reference to the decision of the Privy Council in *Amir Hassan*,

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, § 622
—continued.*Khan v. Sheo Baksh Singh, I L R., 11 Cal., 6,*

MOOD, J., that the Court was not precluded from

Jafar Ali, I. L. R., 7 All., 345, referred to *Bhagwant Singh v. Jageshwar Singh, Weekly Notes, All., 1896, p. 87*, and *Abu Saib Khan v. Hamid-un-nissa, Weekly Notes, All., 1886, p. 39* dissented from. The meaning of the term "jurisdiction" used in § 622 of the Civil Procedure Code must not be confined to the territorial or pecuniary limits of the powers of a Court or to the nature of the class to which the case belongs. It implies, in addition to questions of these kinds, the presence or absence of a positive authority or power conferred by the

wise, and where those tribunals have either exceeded or wrongly declined to exercise the authority, the power and the jurisdiction which the law confers upon them, or, under the pretence of exer-

and *Goluck Chander Musant v. Ganga Narain Musant, 20 W. R., 111*, referred to *DHAN SINGH v. BASANT SINGH* I L R., 3 All., 519

214. — Dismissal of suit without considering merits on technical ground—*Suit by sole partner for partnership debt—A*

partner as co-partner. Held that it was the duty to hear and determine the suit which was brought by the person legally entitled to bring it

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, § 622
—continued

alone in his Court, and in declining to entertain it on the merits he had failed to exercise his jurisdiction, and had acted with material irregularity within the meaning of § 622 of the Civil Procedure Code. *Muhammad Saleman Khan v. Fatima, I L R., 9 All., 104*, and *Dhan Singh v. Basant Singh, I L R., 8 All., 519*, referred to. A suit should not be dismissed on merely technical grounds when the merits are proved and no injustice by surprise or otherwise will be done. *GOBIND PRASAD v. CHANDAR SERNAR* I L R., 9 All., 486

215. — *Failure to exercise jurisdiction*—Where a Subordinate Judge wrongly held that a suit was one of the nature contemplated by a 539 of the Civil Procedure Code, and returned the plaint for presentation to the District Judge.—Held that the High Court had power, under § 622 of the Code, to interfere, the subordinate Judge having failed to exercise a jurisdiction vested in him by law. *VISHVAMATH GOVIND DESHMUKH v. RAMDHAT* I L R., 15 Bom., 148

216. — *Jurisdiction, Interference with exercise of—Alleged irregularity by District Judge in decision of suits—A and B*, both of whom set up a claim to certain land, brought separate rent suits against the tenants. In none of these suits did the amount claimed exceed ₹100.

in favour of B, and the Judge then decided the rent suits instituted by B in his favour, and dismissed the suits instituted by A. Held that there was no such irregularity on the part of the District Judge in the course which he pursued of making his decision in the rent suit depend upon the decision in the suit to establish title as would justify the Court in interfering under § 622 of the Civil Procedure Code. *DOORGA NARAIN SEV v. RAM LALL CHATURAR*

[I L R., 7 Cal., 330

S C DEORJA NARAIN MISSEER v. GOARDHNUX GHORE 8 C L R., 86

217. — *Jurisdiction, Interference with exercise of—Sale in execution of decree against estate of deceased—Suit against representatives of deceased husband's estate—Order releasing property from attachment—In 1862 a*

infant sons used and the widow was made a defendant as representing the estate of her deceased sons.

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622
—continued.

adopted son, whom she alleged to have adopted in 1874. The adopted son was not made a party to the suit: this objection was overruled, but the same objection was taken by the adopted son through his natural father as his guardian and next friend, and the Court released the 1/4th share from attachment, and allowed the objection. Against this order some of the plaintiffs appealed, but pending the appeal another of the plaintiffs applied to the High Court, under s. 622 of the Code of Civil Procedure, to have the order set aside. The Court refused to interfere with the order, inasmuch as there appeared to be no material irregularity therein. **SOTISH CHUNDER LAHIRY v. NIL COMUL LAHIRY**

[I. L. R., 11 Calc., 45]

218. ————— *Jurisdiction, Interference with exercise of—Civil Procedure Code, 1882, s. 30—Party added after decree.*—A Subordinate Judge having permitted the junior widow of a Hindu to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband, the High Court declined to interfere under s. 622 of the Code of Civil Procedure. **LINGAMMAL v. CHINNA VENKATAMMAL** I. L. R., 6 Mad., 237

219. ————— *Jurisdiction, Interference with exercise of—Death of sole defendant—Application to add representative.*—In a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd November 1880 the Court rejected the application under the provisions of art. 171B of Act XV of 1877, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but the application was also rejected on the 20th September 1881. On appeal to the High Court, —Held that no appeal lay against the latter order, and an appeal against the order of November 1880 was out of time, but that the High Court would take cognizance of the case under s. 622 of the Civil Procedure Code. **BENODE MOHINI CHOWDHRAIN v. SHARAT CHUNDER DEY CHOWDHRY** [I. L. R., 8 Calc., 337
10 C. L. R., 449; 12 C. L. R., 421]

220. ————— *Transfer of interest pending suit—Lis pendens—Application to bring transferee upon the record—Civil Procedure Code, s. 244.*—A decree of the High Court, giving possession of certain shares in a bank to the plaintiff R, was reversed on appeal by the Privy Council. The defendant then applied to the Court of first instance to order restitution of the shares, which had been realized by the plaintiff. Upon being ordered to produce the shares, R made an application to the Court, professedly under s. 244 of the Civil Procedure Code, in which he alleged that, pending the appeal to

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622
—continued.

the Privy Council, he had transferred the shares to G, his counsel in the case, who had failed to restore them, and he prayed "that the said person might be brought upon the record, and that execution for recovery of the said shares might be given against him." The Court passed an order upon this application, calling on G to show cause why he should not be called upon to restore the shares made over to him by R, and he thereupon filed an answer denying that he was the custodian of the shares, and alleging that he was their purchaser for value. The Court passed an order directing that G's name should be placed on the record, so that the decree might be executed against him. Held that the application by R was meant to be and actually was one praying that, in respect of the scrip, restitution of which was being enforced against him, the person to whom some interest in it, more or less, had come pending the suit, might in addition to himself, in so far as such interest had passed from him, be brought under the operation of the execution-proceedings; that this was an application under s. 372 of the Civil Procedure Code; and the order passed on it, being appealable under s. 588 (21), was not open to revision by the High Court under s. 622. **RAJNOR v. MUSSOORIE BANK** I. L. R., 7 All., 681

221. ————— *Act XX of 1863, s. 18—Order refusing permission to sue.*—An order passed under s. 18 of Act XX of 1863, refusing leave to sue, is not appealable, nor, if the Judge has exercised his discretion, liable to revision under s. 622 of the Code of Civil Procedure. **IN RE VENKATESWARA** I. L. R., 10 Mad., 98

See ANONYMOUS . I. L. R., 10 Mad., 98 note

222. ————— *Revision of interlocutory order when appeal lies from final decree—Power of High Court.*—There is nothing in s. 622 of the Code which prevents the High Court from setting aside an interlocutory order if made without jurisdiction. The word "case" in that section is wide enough to include such an order, and the words "records of any case" include so much of the proceedings in any suit as relate to an interlocutory order. **Omrar Mirza v. Jones**, 12 C. L. R., 148; **Harsaran Singh v. Muhammad Raza**, I. L. R., 4 All., 91; **Chattar Singh v. Lekhray Singh**, I. L. R., 5 All., 298; **Farid Ahmad v. Dulari Bibi**, I. L. R., 5 All., 233, dissented from. **DHAPI v. RAM PERSHAD** [I. L. R., 14 Calc., 768]

223. ————— *Application and purpose of s. 622—Civil Procedure Code (1882), s. 591—Interlocutory orders.*—An application under s. 622 of the Civil Procedure Code cannot be entertained in the case of those interlocutory orders against which, though no immediate appeal lies, a remedy is supplied by s. 591, which provides that they may be made a ground of objection in the appeal against the final decree. The purpose with which s. 622 was framed was to enable a party to a suit to get a decision or order of a lower Court rectified by the High Court

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed. **BISHESHAR KWAR v. HARI SINGH** I. L. R., 5 All., 42

231. ————— *Distribution of assets—Application of decree-holder struck off.*—Where a rateable distribution was ordered among decree-holders whose applications had been struck off the file prior to realization of assets.—*Held* that it was open to the party injured to apply to the High Court under s. 622 to reverse the order. **TIRUCHIT-TAMBALA CHETTI v. SESHAYYANGAR**
[I. L. R., 4 Mad., 383]

232. ————— *Execution-proceedings—Rateable distribution—Application for further execution—Notice.*—A and subsequently B obtained decrees against X, in execution of which the same land was attached, and B obtained an order for rateable distribution. Neither decree was satisfied. A then applied for attachment of other property, and the sale was fixed for 28th September. On 25th September B filed a petition for further attachment under ss. 250, 274, and also a petition for rateable distribution under s. 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under s. 295, because no application for execution was pending. *Held* on appeal that the petition for execution was wrongly rejected, but that the High Court could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution. **VENKATARAMAN v. MAHALINGAYAN**
[I. L. R., 9 Mad., 508]

233. ————— *Failure to exercise jurisdiction—Refusal of application for rateable distribution of sale-proceeds.*—A debtor against whom several decrees had been passed filed his petition in the Insolvency Court at Madras and the usual vesting order was made. One of the decree-holders had already attached property of the insolvent and had

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

obtained an order for sale in a District Court, and another decree-holder now applied to the same Court in execution of his decrees, for attachment of other property, and for rateable distribution of the proceeds of sale to be held in execution of the attachment already made. The District Judge held that the vesting order was a bar to both these applications. *Held* that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code, the Judge having failed to exercise a jurisdiction vested in him by law. **VIRABHAGHAVA v. PARASURAMA**
[I. L. R., 15 Mad., 372]

234. ————— *Sanction for prosecution—Act X of 1872 (Criminal Procedure Code), ss. 468, 469.*—The discretionary power of a Civil Court, before or against which an offence mentioned in s. 468 or 469 of Act X of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X of 1877. **IN THE MATTER OF THE PETITION OF MADHO PRASAD** I. L. R., 3 All., 508

235. ————— *Power of revision over Small Cause Court, Calcutta—Alleged excess of jurisdiction by Small Cause Court—Trespass to immovable property.*—The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immovable property of which he proved he was in possession. The defendant contended that such a suit was one for the determination of a right to or interest in immovable property, and was therefore not maintainable in the Small Cause Court. The Small Cause Court decided the case, and the High Court, on an application under s. 622, granted a rule to show cause why the judgment should not be set aside as being without jurisdiction. *Held*, on such application, that the Court had jurisdiction to entertain such a suit. **PEARY MOHUN GHOSAL v. HARRAN CHUNDER GANGOOLY** I. L. R., 11 Cal., 261

236. ————— *Civil Procedure Code, 1852, s. 43—Cause of action—Splitting a claim—Separate suits for rent due for successive years.*—Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease. The sum of the two claims exceeded the pecuniary limit of the Court's jurisdiction. The suit for the rent of the first year was dismissed under s. 43 of the Code of Civil Procedure, on the ground that the claim ought to have been included in the suit for the second year's rent. *Held*, in an application under s. 622 to the High Court to set aside the order, that although s. 43 did prevent the maintenance of the two suits, yet as the petitioners had no intention of abandoning either claim, the proper course was to allow them

SUPERINTENDENCE OF HIGH COURT—continued

14 CIVIL PROCEDURE CODE, s 622

—continued

to withdraw both suits and file a fresh suit in a competent Court **ALAGU v. ARDOLLA**

[I. L. R., 8 Mad., 147]

237. — *Civil Procedure Code, s 25, Order under, for transfer of suit*—*Held* that an order under s 25 of the Civil Procedure Code, transferring a suit in which an appeal would lie from the decree made therein, was not subject to revision by the High Court under s 622 **FARID AHMAD v. DULAH BIDI** I. L. R., 6 All., 233

MUHAMMAD SAFFAH HUSEIN v. PURAN CHAND

[I. L. R., 30 All., 395]

238. — *Court Fees Act, 1870, s 6, and sch II, art 17 (1)—Stamp—Valuation by subordinate Court—Practice—Civil Procedure Code (Act XIV of 1882), s 622, and Bom Reg II of 1827, s 6*—A decision by a subordinate Court on a question of valuation, determining the amount

239. — *Order dismissing suit for insufficient stamp*—In a suit instituted upon a ten rupee stamp for an account, the removal of the original trustee and the appointment of a new trustee, where the value of the trust property was 5 lakhs of rupees the Court below directed that the stamp should be calculated upon the value of the trust property, and ordered that the deficiency should be made up within a particular time. Before the time expired, a rule was obtained from the High Court under s 622 of the Civil Procedure Code to show cause why the order should not be set aside. *Held* that the rule must be discharged, inasmuch as, if the suit had been dismissed on the expiration of the time limited on the ground that the relief was not properly valued, there would have been an appeal **OMRAO MIRZA v. JONES** 12 C. L. R., 148

240. — *Order made without jurisdiction under Act XIX of 1841, ss 3 and 4*—Where a District Court, purporting to act under s 4 of Act XIX of 1841, directed an inventory to be made of the property of a deceased person, without jurisdiction **ABDUL RAHMAN v. KUTTI AHMED** [I. L. R., 10 Mad., 68]

241. — *Act XIX of 1841, ss 2, 3, 6, 15—Order of District Court on petition by Court of Wards*—On a petition presented by the Agent of the Court of Wards, a District Court made an order which purported to have been made under Act XIX of 1841, s 15. The conditions prescribed by ss 3 and 4 were not shown to exist. *Held* the order of the District Court was illegal, and was subject to revision under s 622 of the Code

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, s 622

—continued.

of Civil Procedure **PANAMA v. COLLECTOR OF GODAVARI** I. L. R., 12 Mad., 341

242. — *Bengal Tenancy Act (VIII of 1885), ss 104, cl 2, 105, 106, 108—Rule III of the rules made under the Act—Jurisdiction—Record of right Civil Procedure Code (Act XIV of 1882), ss 108, 622—Order of Special Judge as to settlement of rents*—The High Court has no jurisdiction either to entertain a second

243. — *Bengal Tenancy Act (VIII of 1885), s 174—Deposit, Nature of—Jurisdiction—Application under s 622 of the Civil Procedure Code*—The deposit under s 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and the Court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its provisions. Where, therefore the Court accepted a deposit partly of cash and partly of a Government Promissory Note, and notwithstanding the objection of the auction purchaser gave the judgment-debtor the benefit of s 174 and set aside the sale, the High Court set aside such order under s 622 of the Civil Procedure Code **RAHIM BEG v. NARAYAN LAL GOSWAMI** I. L. R., 14 Calc., 321

244. — *Bengal Tenancy Act (VIII of 1885), s 198—Suit for rent—Co-sharers, Suit by—Joint undivided estate—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s 622*—A District Judge, in deciding a rent suit, held that s 188 of the Bengal Tenancy Act prohibited the Court from entertaining the suit in the form in which it had been framed, and

I. L. R., 14 Calc., 201, and **Umesh Chander Roy v. Dasher Mullick**, I. L. R., 14 Calc., 203 note, followed. **Amir Hassan Khan v. Siro Dakh Singh**, I. L. R., 11 Calc., 5; I. L. R., 11 I. 1, 237 distinguished. **Jedontvut Paritck v. Jade Ghose Alkush** I. L. R., 15 Calc., 47

245. — *High Court's power of interference with order of Special Judge—Rules under Bengal Tenancy Act, Ch I, No 25—Power of Local Government to make the rule—Bengal Tenancy Act, ss 104, 108, and 159*—A number of tenants were joined as defendants in a proceeding for settlement of rents under s 104, cl 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s 108, cl 2, from the Revenue Officer's decision making all or nearly

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of Rs10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code. *Held* by a Full Bench (1) that the Special Judge refused to exercise a jurisdiction vested in him by law; that the Court of Special Judge is a Court subordinate to the High Court; and the High Court had power to interfere under s. 622 of the Civil Procedure Code. *Sherarat Koor v. Nirpal Roy, I. L. R., 16 Calc., 596*, dissented from. (2) That the Local Government acted within the powers conferred by s. 159, cl. 1, of the Bengal Tenancy Act, in making rule 25 of Ch. VI of the Government rules under the Act, by which a landlord is authorized to join as defendants several tenants in one application for settlement of rents. *UPADHYA THAKUR v. PERSIDH SINGH . . . I. L. R., 23 Calc., 723*

246. ————— *Refraining from exercise of jurisdiction—Special Judge acting under Bengal Tenancy Act (VIII of 1885), ss. 106, 108—Boundary dispute—Decision of settlement officer acting as survey officer under Bengal Survey Act (Beng. Act V of 1875).*—Where the Special Judge under the Bengal Tenancy Act (VIII of 1885), in a case of a boundary dispute which had been tried and decided by a settlement officer acting as a survey officer under Part V of the Bengal Survey Act (V of 1875), dismissed an appeal on the ground that no appeal lay to him in such a case, the High Court declined to interfere under s. 622 of the Civil Procedure Code, being of opinion that the settlement officer had power under s. 189 (b) of the Bengal Tenancy Act, and rule 1, Ch. VI of the Government rules under the Tenancy Act, to act as he had done, and that therefore, in holding that no appeal lay to him, the Special Judge had not refrained from exercising any jurisdiction which he ought to have exercised. *IRSHAD ALI CHOWDHRY v. KANTA PRASHAD HAZAREE . . . I. L. R., 21 Calc., 935*

247. ————— *Special Judge, Discretion of—Dekkan Agriculturists' Relief Act (XVII of 1879)—Finding of fact.*—When the Special Judge under the Dekkan Agriculturists' Relief Act (XVII of 1879) entertains a clear opinion that the findings of the Subordinate Judge on the questions of fact are erroneous, and exercises his discretion in setting aside the decree, the High Court will not, in its extraordinary jurisdiction, interfere with that discretion except under most exceptional circumstances. *RAYACHAND MAYACHAND v. RAHIM-BHAI . . . I. L. R., 18 Bom., 347*

248. ————— *Revisionary power of the Special Judge—Cases in which failure of justice appears to have taken place—Jurisdiction—Discretion of Court—Dekkan Agriculturists' Relief Act, s. 53.*—S. 622 of the Civil Procedure Code (Act XIV of 1882) gives to the High Court

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

jurisdiction to interfere only where the lower Court acts without jurisdiction or has exercised its jurisdiction "illegally or with material irregularity." Under s. 53 of the Dekkan Agriculturists' Relief Act (XVII of 1879), the Special Judge has a revisionary power in all cases where a failure of justice appears to have taken place. It is for him to decide whether the finding on a question of fact by a Subordinate Judge is of that nature, and in doing so he is entirely within his jurisdiction. *Shidhu v. Bali, I. L. R., 15 Bom., 180*, dissented from. *GURU BASAYA v. CHANMALAPPA*

[I. L. R., 19 Bom., 286]

249. ————— *Mamlatdars' Courts Act (Bom. Act III of 1876), s. 15, cl. (a), sub-cl. (1) and (2), s. 18—Execution of decree for possession against a third party—Jurisdiction of Mamlatdar.*—A obtained an order in a Mamlatdar's Court against G for possession of a house, and in execution N, who was found in possession of the house and who was reported by the village officers as holding possession for G, was evicted by order of the Mamlatdar. N then applied to the High Court. *Held* that the Mamlatdar's order was, strictly speaking, beyond his authority, but that, as N's petition to the High Court contained no distinct denial that he was occupying merely on behalf of the defendant, the High Court would not interfere in its extraordinary jurisdiction. *NATHEKHA v. ABDUL ALI . . . I. L. R., 18 Bom., 449*

250. ————— *Irregular decree of Mamlatdar made by consent of parties—Subsequent refusal by Mamlatdar to order execution of decree—Questions of fact.*—The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in these suits, that unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months, the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant, thereupon applied to the High Court in its extraordinary jurisdiction, and alleged that the money had not been duly tendered. *Held* that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so. *Held* also that the High Court would not go into the question as to the due tender of the money. It was not open to the High Court, in the exercise of its extraordinary jurisdiction, to go into this question of fact, nor would it be proper to further the execution of an irregular decree, especially as the applicant had a clear remedy

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, S. 622

—continued

by suit RAMRAO TATYAJI PATIL v. BABAJI DHOVDJI BHEVE . I L. R., 20 Bom., 630

251. — *Mamlatdar, Jurisdiction of*—The plaintiff sued in a Mamlatdar's Court for possession of certain lands, alleging that the defendants held them under a lease, the time of which had expired. The Mamlatdar found the execution of the lease proved, but held it to be

matter was not one for the extraordinary jurisdiction

KULKARNI v. NANA . I L. R., 21 Bom., 731

252. — *Dispossession of a third person not a party to suit—Remedy of person so dispossessed—Mamlatdar acting without jurisdiction*—G got a decree for possession against P in a Mamlatdar's Court. In execution the Mamlatdar directed the ouster of P, who was in possession, and who was not a party to the decree. Held that the

253. — *Order of District Judge acting under Bombay District Municipal Act (Bomb Act II of 1884), s. 23—Application to set aside a Municipal election—Order made as to costs—"Court," meaning of*—A District Judge acting under s. 23 of the Bombay District Municipal Act (Bombay Act II of 1884) is not a "Court" within the meaning of

ROJI . I. L. R., 21 Bom., 219

254. — *Reson—Illegality in exercise of jurisdiction—Judge's duty to decide secundum allegata et probata*—The plaintiffs sued upon two bonds executed by the defendant in their father's favour, one for Rs 200 and the other for Rs 15 annas. The defendant in his written state-

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, S. 622

—continued

ment, as well as in his deposition, admitted execution of the bonds in question but pleaded non receipt of the consideration. The subordinate Judge held that the bond for Rs 200 was not proved, but awarded the claim upon the other bond. On appeal, one of the issues raised by the Assistant Judge was—are the bonds in suit proved? He held that the plaintiffs had failed to prove execution of the bonds, and dis-

that could be tried in the present case was non receipt of consideration GORAKH BABAJI v. VITHAL NARAYAN JOSHI

[I. L. R., 11 Bom., 435]

255. — *Passing decree*

that the defendant was bound to prove that he had taken such care of the horse as a man of ordinary prudence would under similar circumstances have

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

shifted by the explanation which he gave and which was neither contradicted nor *primi facie* improbable; and that the decree of the lower Court, being unsupported by any proof, and based on speculation and assumption, was one which that Court had no jurisdiction to pass, and should consequently be set aside in revision under s. 622 of the Civil Procedure Code. *Per* BRODHERST, J., that as the decree was not only unsupported by proof, but opposed to the evidence on the record, the lower Court had "acted in the exercise of its jurisdiction illegally," within the meaning of s. 622. *Collins v. Bennett*, 46 *New York Rep.*; *Byrne v. Roadle*, 2 *H. and C.*, 722; *Gee v. Metropolitan Railway Company*, *L. R.*, 8 *Q. B.*, 161; *Scott v. London Dock Company*, 3 *H. & C.* 596; *Manzoni v. Douglas*, 6 *Q. B. D.*, 145; *Cotton v. Wood*, 8 *C. B. N. S.*, 569; *Darey v. London and South Western Railway Company*, 12 *Q. B. D.*, 70; and *Hammack v. White*, 11 *C. B. N. S.*, 588, referred to. *SHIELDS v. WILKINSON* [*I. L. R.*, 9 *All.*, 398]

256. ————— *Civil Procedure Code, 1882, s. 516—Material irregularity—Omission to give notice of proceedings.*—A District Munsif passed a decree in the terms of an award without giving notice of the filing of the award under s. 516 of the Code of Civil Procedure. *Held* that the District Munsif acted with material irregularity within the meaning of s. 622 of the Code of Civil Procedure. *RANGASAMI v. MUTTUSAMI* [*I. L. R.*, 11 *Mad.*, 144]

257. ————— *Civil Procedure Code (1882), s. 156—Decree passed upon an award filed in Court without notice of its filing having been sent to the parties.*—*Held* that it was a good ground for revision of a decree based upon an award filed in Court that no notice of the filing of the award was given by the Court to the parties as required by s. 516 of the Code of Civil Procedure, even though the applicant in revision might have received information *atunde* that the award had been filed. *Rangasami v. Muttusami*, *I. L. R.*, 11 *Mad.*, 144, followed. *CHATARBHJ DAS v. GANESH RAM* [*I. L. R.*, 20 *All.*, 474]

258. ————— *Error of law—Material irregularity—Personal decree against minors for debt of deceased Hindu father.*—In a suit to recover a debt incurred by the deceased father of a Hindu family, the District Judge gave a personal decree against the sons of the debtor, of whom two were minors. *Held* that, under s. 622 of the Code of Civil Procedure, the decree against the minors should be reversed, but that the Court has no power to revise the decree against the other defendants. *BHASHYAM v. JAYARAM*. . . . *I. L. R.*, 11 *Mad.*, 303

259. ————— *Civil Procedure Code, s. 373—Leave given by District Court on appeal to withdraw suit—Material irregularity.*—A District Munsif having dismissed a suit, plaintiff

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

appealed to the District Court, and at the same time applied to the Court to allow him to withdraw his suit with permission to bring a fresh suit on the same cause of action. The District Court granted the application without assigning any reasons for its order. *Held*, under s. 622 of the Code of Civil Procedure, that the District Court had acted with material irregularity. *TIRUPATI v. MUTTA*. . . *I. L. R.*, 11 *Mad.*, 322

260. ————— *Immoveable property—Right of fishery—Possession—Dispossession—Specific Relief Act, I of 1877, s. 9—Civil Procedure Code (Act XIV of 1882), ss. 30 and 622—Objection under s. 30 where suit is under s. 9 of Specific Relief Act.*—The plaintiffs were fishermen belonging to the village of *N*. They claim in this suit for themselves and the other fishermen of their village the exclusive right of fishing in the Nagothna Creek between high and low-water marks, within certain limits set forth in the plaint, and, under s. 9 of the Specific Relief Act, I of 1877, they sought to recover possession of that right from the defendants, who, they alleged, had dispossessed them within six months before this suit was filed. The Subordinate Judge held that they had established their right, and made an order directing that possession should be restored to them. The defendants then applied to the High Court under its extraordinary jurisdiction, contending that the order made by the first Court was beyond its jurisdiction, the right of fishing not being immoveable property within the meaning of that section. *Held* that the first Court did not act without jurisdiction, the right claim coming within the denomination of immoveable property. It was contended by the defendants that the plaintiffs, who claimed on behalf of other fishermen of the village, should have proceeded under s. 30 of the Civil Procedure Code (Act XIV of 1882). *Held* that the objection was a good one; but, inasmuch as it was still open to the defendants to establish their right by a regular suit, the irregularity in the present suit was not such as to call for the exercise of the powers of the High Court under s. 622 of the Civil Procedure Code. *BRUNDAL PANDA v. PANDOL POS PATIL* [*I. L. R.*, 12 *Bom.*, 221]

261. ————— *Jurisdiction, Presumption of—Maxim, omnia præsuntur rite et solemniter esse acta—Civil Procedure Code, ss. 103, 283, 647.*—The consideration of an objection under s. 278 of the Civil Procedure Code, having first been entertained and adjourned by an Additional Subordinate Judge, subsequently came before the Subordinate Judge, who struck off the case for default. No order under s. 25 transferring the case to the Subordinate Judge was on the record, nor was it otherwise shown how he obtained jurisdiction to deal with it. *Held* that the High Court, in the exercise of its revisional powers under s. 622 of the Code, should not presume that the Subordinate Judge had taken up the case without jurisdiction: that the proper remedy of the petitioner was an application under s. 103,

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, § 622 —continued

read with s 647, or a suit under s 283, and that the High Court should not interfere in revision **SUEO PRASAD SINGH v KASTURA KUAR**

[I L R., 10 All., 119]

282. ——— *Limitation—High Court's revisional powers—Material irregularity*—On the 29th November 1886 this suit was filed on a bond dated the 29th November 1881, pay-

(Act XIV of 1882) *Held*, reversing the decision of the Subordinate Judge, that the suit was not barred by time the cause of action having accrued on the 29th November 1883, that is, the day of the month corresponding with the day on which the bond was dated. *Held* further that, the decision of the Subordinate Judge being palpably wrong and illegal, the High Court had jurisdiction to exercise its revisional powers under s 622 of the Code of Civil Procedure (Act XIV of 1882). Where a Court with a full and correct apprehension of the questions which it is necessary for it to decide in any case, errs, in law or in fact, in its decision of any such questions with which it has jurisdiction to deal, its

remedy there may be, in the Bombay Presidency, under cl 2 of s 5 of Regulation II of 1827. But it is otherwise in any case where the Court, having a mistaken and wrong apprehension of the questions at issue proceeds to determine an issue, which does not really arise in the case, and bases its decision of the case on its determination of that issue. If it does so, it acts with material irregularity in the exercise of its jurisdiction **VENKUDAI v LAKSHMAN VENKOBAB KHOT** I. L. R., 12 Bom., 617

283. ——— *Orders in pauper suit—Civil Procedure Code, s 407*—All orders passed under s 407 of the Code of Civil Procedure are not excluded from the exercise of the revisional powers of the High Court under s 622 of the Code.

whether the requirements of the law have been duly and properly obeyed by the Court whose order is the subject of revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order **MUHAMMAD HUSSAIN v AJUDHIA PRASAD**

[I. L. R., 10 All., 467]

284. ——— *Pauper suit—Costs of plaintiff—Right of appeal—Decree omitting to order plaintiff to pay Court-fees—Power*

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, § 622 —continued

of Collector to apply under the extraordinary jurisdiction of High Court—*Amendment of decree*—The plaintiff's suit in *forma pauperis* was rejected by the Subordinate Judge. The decree, however, omitted to order the recovery from the plaintiff of the Court-fees payable in the plaint. The Collector applied to the High Court under its extraordinary jurisdiction for the rectification of the decree. It have been Collector in revision Collector

of **Rainburgi v Janardas**, I L R., 6 Bom., 590, that no appeal by Government would lie in the case, and that, in the exercise of its extraordinary

285. ——— *Civil Procedure Code, ss 493, 588 Appeal against order for issue of notice under s 494—Revision by High Court of an order purporting to be made on appeal from such an order*—A petition praying for a temporary injunction in a suit was presented by the plaintiff in a subordinate Court. The Judge refused to pass orders on it without hearing the defendants and ordered notice to issue to them. The plaintiff appealed to the District Judge who granted the injunction prayed for. *Held* that no appeal lay from the subordinate Court, and that the District Judge had purported to exercise a jurisdiction not vested in him by law **LUTS v LUTS**

[I L R., 12 Mad., 186]

286. ——— *Civil Procedure Code (Act XIV of 1882), s 412—Dismissal of suit in forma pauperis without trial—Liability of plaintiff for Court-fee*—A plaintiff who sues in *forma pauperis* is liable to pay the stamp duty if

287. ——— *Civil Procedure Code, s 269—Order on appeal affirming order granting application for review of judgment*—The High Court will not in the exercise of its revisional powers under s 622 of the Code, interfere with an order dismissing an appeal from an order under s 629, inasmuch as there is a remedy by way of appeal from the final decree at the re-hearing **GOPAL DAS v ALAP KHAN**

[I L R., 11 All., 383]

288. ——— *Pauper suit—Judge applying to suit a course of inquiry not applicable—Civil Procedure Code (1882), s 407,*

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

284. ——— *Land Acquisition Act (X of 1870), ss. 3, 24, and 25 Exercise of jurisdiction by Judge under the Act—"Material irregularity"—Mistake in regard to the principle of calculation of the value of the land acquired.*—If a Judge and assessors, sitting to determine the amount of compensation to be awarded for land acquired under the Land Acquisition Act of 1870, have refused to take into consideration any of the matters prescribed by s. 24 of that Act, or have improperly taken into consideration any of the matters prohibited by s. 25 thereof, such procedure would amount to material irregularity in the exercise of their jurisdiction, and would justify the intervention of the High Court under s. 622 of the Code of Civil Procedure. Having regard to the definition of "land" contained in s. 3 of Act X of 1876, there is nothing illegal in a Judge taking into account the value of works on the land which make it suitable for a salt factory; and even if, in making his estimate of the market value of the land, he took into consideration the price paid for neighbouring pans, and was in error in so doing, his mistake would be only one concerning the principles of valuation, and not an irregularity in the exercise of jurisdiction. *JOSEPH v. SALT CO* . . . *I. L. R., 17 Mad., 371*

285. ——— *Power to call for record of cases not appealable to High Court—When a Court can be said "to have acted in the exercise of its jurisdiction illegally or with material irregularity."*—A District Judge disposed of some suits on a point taken by himself on appeal, without affording the parties an opportunity of proving what was necessary to meet the point, and admitted other appeals after they had become time-barred. *Held* by the majority of the Full Bench that where a subordinate Court, having applied its mind to a question of law or procedure, arrives at an erroneous decision, such decision is not by itself any ground for the exercise by a High Court of the powers given by s. 622 of the Code of Civil Procedure. *Amir Hassan Khan v. Sheo Baksh Singh, I. L. R., 11 Cal., 6*, followed. *Held* further (BEST and DAVIES, JJ., dissenting) that the case contemplated by the words "act . . . illegally or with material irregularity" in s. 622 of the Code of Civil Procedure is that of a perverse decision on a question of law or procedure, a decision being perverse where it is a conscious departure from some rule of law or procedure. *Per* BEST, J.—The words in question of s. 622 of the Code are applicable to illegalities or irregularities which are the result merely of ignorance of law or carelessness, and the disposal of a suit on a point taken by the Court itself on appeal, without affording the parties an opportunity of proving what is necessary to meet the point, is an irregularity in procedure within the meaning of s. 622; and that the inadvertent admission of an appeal that is time-barred is an irregularity in procedure within the meaning of that section. *Per* DAVIES, J.—The clause of s. 622 in question is applicable

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

only to errors of procedure, and it is not in every case that the High Court would, in the exercise of the discretionary power granted it by the section, interfere in revision. The interference would be confined to cases where the illegality or irregularity was such as had occasioned or might occasion a substantial failure of justice, as in the present case. *KRISTAMMA NAIDU v. CHAPA NAIDU*
[*I. L. R., 17 Mad., 410*]

286. ——— *Error of procedure—Mode of applying powers of superintendence of Court under s. 622.*—The words "acting with material irregularity" in the third clause of s. 622, Civil Procedure Code, imply only the committing of an error of procedure, but "acting illegally" does not mean the same thing. The third clause of s. 622, Civil Procedure Code, is intended to authorize the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases, and the question whether any case comes under the clause has to be determined with reference to the grossness and palpableness of the error complained of, and to the gravity of the injustice resulting from it. *Kristamma Naidu v. Chapa Naidu, I. L. R., 17 Mad., 410*, dissented from. *Amir Hassan Khan v. Sheo Baksh Singh, I. L. R., 11 Cal., 6*, explained. *BHAGWAN RAMANUJ DAS v. KHETER MONI DASSI*
[*I. C. W. N., 617*]

287. ——— *Succession Certificate Act (VII of 1889), s. 9—Order granting certificate on the applicant's furnishing security—Discretion of Court.*—The widow of a deceased person having applied for a certificate under the Succession Certificate Act (VII of 1889), the Judge ordered the certificate to issue on the applicant's furnishing security under s. 9 of the Act. *Held* that such an order was within the discretion of the Judge, and there being shown to be nothing improper in the exercise by the Judge of his jurisdiction, the Court refused to interfere to set the order for security aside. *Mhalsabai v. Vithoba Khan-dappa Gulbe, 7 Bom. Ap., 26*, referred to. *BAI DEVKORE v. LALCHAND JIVANDAS*
[*I. L. R., 19 Bom., 790*]

288. ——— *Decision of Appellate Court as to jurisdiction of lower Court—Reversal of order rejecting plaint.*—Where a Court of first instance having ordered a plaint presented to it to be returned to the proper Court under s. 57, cl. (a), Civil Procedure Code, the Court of Appeal, acting under s. 588, cl. (6), Civil Procedure Code, set aside such order and directed the original Court to hear the cause,—*Held* that the High Court had no jurisdiction to interfere with such appellate order under s. 622, Civil Procedure Code, for it could not be said that the lower Appellate Court acted in the exercise of its jurisdiction illegally or with material irregularity simply because its decision as to the jurisdiction of the first Court to entertain the suit was erroneous in

SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE, S 622

—continued

1 C W N, 617, referred to Amir Hassan Khan

v. Sheo Baksh, I L R, 11 Cal, 6, explained

Kistamma Naidu v. Chapa Naidu, I L R,

17 Mad, 410 disapproved MATHURIA NATH

SARKAR v. UMESH CHANDRA SARKAR

[I C. W. N., 626]

289 Error in dis

the petitioner had not obtained satisfaction of her

Procedure Code, to divide the assets, and if, with a

He'd further that a mere mistake in law by a

lower court does not bring a case under s 622, Civil

Procedure (ol) Amir Hassan Khan v. Sheo

Baksh Singh, I L R, 11 Cal, 6, followed Biry

Mohan Thakur v. Rav Uma Nath Choudhary

I L R, 20 Cal, 20 referred to Helli (by

BANKER J.) that the third clause of s 622, viz.,

"acted illegally or with material irregularity," is

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SUPERINTENDENCE OF HIGH COURT—continued

4 CIVIL PROCEDURE CODE S 622

—continued.

desirable that the High Court should interfere with them. Held that a summing that the lower Court had no jurisdiction to enter into the question of the bond sides of the decree the order of the lower Court might stand upon the other two grounds for the error, if any does not come within the scope of this clause and having regard to the fact that s 293, Civil Procedure Code, provides a remedy by a regular

Baksh Singh I L R 11 Cal 6, explained Batain Koer v. Dhan Rai, I L R, 5 All, 111 disapproved from Kistamma Naidu v. Chapa Naidu I L R, 17 Cal 410 disapproved. RAGHU NATH GUPTA v. RAJ CHATHAPUT SINGH I C W N, 633

290

Civil Procedure

Code, s 293 High Court's powers of revision—Remedy by suit—The High Court will not exercise its revisional jurisdiction so long as there is any other remedy open to the applicant. Where a Subordinate Judge disallowed an application for the release of certain property which had been attached before judgment. Held that, there being a remedy by suit

All, 353, referred to QUISH v. JAISHAB

[I L R, 15 All, 405]

291

Exercise of

power of High Court under s 622 of the Civil Procedure Code 1932, where there is no appeal—(Order refusing to make person party to oppose probate—Where a Hindu died leaving a widow and also a daughter (who alleged collusion between the widow and one of the executors applying for probate of an alleged will) the daughter was held to have sufficient interest to entitle her to be made a party to the application and to oppose the grant of probate, and the Judge having refused to make her a party, the court finding that no appeal lay from that order thought it a proper case for the exercise of its power under s 622 of the Civil Procedure Code and remanded the case for trial as a corrected application. KUNETRAMONI DAST v. SHYAMA CHURN KUNDU

[I L R, 21 Cal, 539]

292

Order refusing

to amend a clerical error in the form of probate—Probate and Administration Act (V of 1881), s 46—Succession Act (V of 1885), s 263 Where there was a clerical error in the form of probate granted and the Judicial Commissioner refused to amend it on the ground that the probate was granted by his predecessor, it was held that though there was no appeal from such an order under s 8, of the Probate and Administration Act (V of 1881) or s 263 of the Succession Act (V of 1885), yet the High Court might deal with the case under s 622 of

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

the Civil Procedure Code, and set aside the order. *Khetramoni Dasi v. Shyama Churn Kundu*, I. L. R., 21 Calc., 539, followed *GERINDRA KUMAR DAS GUPTA v. RAJESWARI ROY*. I. L. R., 27 Calc., 5

293. — *Exercise of revisional powers when there was remedy by separate suit—Right of suit—Executing Court delivering possession of property not specified in sale-certificate.*—In execution of a decree against several joint judgment-debtors, certain immoveable property was proclaimed for sale. The sale proclamation described the property as so many biswas and biswansis in certain villages amounting to a certain area. The judgment-debtors possessed property in those villages over and above that sought to be sold. The property as above described was sold, and certificates of sale were granted which in terms followed the description contained in the proclamation of sale. The decree-holder purchased the property so sold and applied for possession thereof, but in their application they inserted a detail of the specific shares of property held by the several judgment-debtors over which they prayed for possession. The Court executing the decree went into the question of the specification of shares and ordered possession to be delivered over certain specific shares of the several judgment-debtors. *Held* that, under the circumstances described above, the High Court would interfere in revision under s. 622 of the Code of Civil Procedure, although it was possible that the matters complained of might be grounds for a separate suit. *Guise v. Jaisraj*, I. L. R., 15 All., 405; *Gopal Das v. Alaf Khan*, I. L. R., 11 All., 383; and *Prosunno Kumar Sanyal v. Kali Das Sanyal*, I. L. R., 19 Calc., 663, referred to. *GHULAM SHABIR v. DWARKA PRASAD* [I. L. R., 18 All., 163

294. — *Decision as to admissibility of document—Error in law.*—*Per FARRAN, C.J.*—When Courts in the exercise of their judicial functions decide that a document is inadmissible in evidence, having exercised their judgment upon the question of its admissibility or inadmissibility, we have no jurisdiction to interfere in the matter under s. 622. What the Courts do in such a case, assuming the document tendered to be erroneously rejected is to make a mistake upon a question of law, and it does not appear to me to be material whether the mistake in law is made during the hearing of the case or in the final decision. A mere error in law is not, I think, an illegality or a material irregularity within the meaning of s. 622 of the Code. *MADHABRAV GANESHPANT DYE v. GULABHAI LAKABHAI* [I. L. R., 23 Bom., 177

295. — *Revision, Powers of—Stamp Act (I of 1879), s. 34, sub-s. (3).*—A certain document, although unstamped, was admitted in evidence by the first Court. Upon appeal the Subordinate Judge refused to admit the document in evidence, on the ground that it was unstamped, and on the merits reversed the judgment of the first Court

SUPERINTENDENCE OF HIGH COURT—continued.

4. CIVIL PROCEDURE CODE, S. 622 —continued.

and dismissed the suit. The plaintiff moved the High Court under s. 622, Civil Procedure Code, on the ground that, under s. 34, sub-s. (3), of the Stamp Act, the document, although unstamped, was admissible in the lower Appellate Court, inasmuch as the first Court admitted the same. *Held* (by MACLEAN, C.J.) that s. 622, Civil Procedure Code, did not apply. That an error of law does not amount to acting, in the exercise of jurisdiction, illegally or with material irregularity within the meaning of s. 622, Civil Procedure Code. *Amir Hassan Khan v. Sheo Baksh Singh*, I. L. R., 11 Calc., 6, relied upon. *Mathura Nath Sarkar v. Umes Chandra Sarkar*, 1 C. W. N., 626; *Mohunt, Bhagwan Ramanuj Das v. Khetter Moni Dassi*, 1 C. W. N., 617, referred to. *Held* (by BANERJEE, J.) that the error of the lower Appellate Court in rejecting the document, admitted by the first Court, as not stamped, in contravention of s. 34 of Act I of 1879, comes within that part of s. 622, Civil Procedure Code, which speaks of a Court's acting with material irregularity in the exercise of its jurisdiction. That the rejection of the document is more in the nature of a materially irregular act than an erroneous decision on a point of law. The case of *Amir Hassan Khan v. Sheo Baksh Singh*, I. L. R., 11 Calc., 6, must be taken to have settled that it is not every error of law that will come within the scope of s. 622, Civil Procedure Code, but it does not follow that no error of law, unless it is also an error of jurisdiction, can come within the operation of that section. That the error in this case was gross and palpable, and it was likely to have led to injustice. *Amir Hassan Khan v. Sheo Baksh Singh*, I. L. R., 11 Calc., 6, explained. *Mohunt Bhugwan Ramanuj Das v. Khetter Moni Dassi*, 1 C. W. N., 617; *Mathura Nath Sarkar v. Umes Chandra Sarkar*, 1 C. W. N. 626; and *Raghu Nath Gujrati v. Rai Chaitraput Singh*, 1 C. W. N., 633, referred to. *ENAT MONDUL v. BALOBAM DEX*. 3 C. W. N., 581

296. — *Civil Procedure Code (Act XIV of 1882), s. 108—Ex-parte decree, setting aside, Effect of, as against contesting defendants who preferred appeal—Jurisdiction of a Court to set aside, under s. 108, Civil Procedure Code, decree of a superior Court.*—Plaintiff brought a suit against defendants 1 and 2 for declaration of title to, and for khas possession of, certain land against the other defendants. The suit was contested by defendants 1 and 2 only, and plaintiff obtained a decree. Defendants 1 and 2 preferred an appeal to the Subordinate Judge's Court and a second appeal to the High Court, with the result that the judgment of the first Court was upheld; the other defendants, who were no parties to the appeal, applied to set aside the *ex-parte* decree; the Munsif ordered that "the *ex-parte* decree be set aside and the original regular suit be restored." By a later order defendants 1 and 2 were allowed to defend the suit *de novo* and to file fresh defences. *Held* that the Munsif had no jurisdiction to set aside the decree as against defendants 1 and 2, which was not an *ex-parte* decree and was not a decree of his Court, but that of a superior Court; and that the

SUPERINTENDENCE OF HIGH COURT—concluded**4. CIVIL PROCEDURE CODE, S. 622**
—concluded

High Court had jurisdiction, under s. 622 Civil Procedure Code to set aside the order of the Munsif. That
dulla v. Johurennassa Bibee 1. L. R., 483
 distinguishing. *MOYOVONINI CHOWDHURANI v. NARA*
NARAYAN ROY CHOUDHURY 4 C. W. N., 456

SUPERSTITIOUS USES**Request for—**

See *WILL—CONSTRUCTION* 2 Hyde, 65
 [5 B. L. R., 433
 2 B. L. R. O. C., 149
 I. L. R., 18 Mad., 424

Statute of—

See *ENGLISH LAW—SUPERSTITIOUS USES*
STATUTE OF 1 Bom. Ap., 4
 [12 Bom., 214

SUPPLEMENTAL SUIT.

See *COSTS—SPECIAL CASES—PARTITION*.
 [I. L. R., 21 Calc., 904

SUPREME COURT, BOMBAY.

See *JURISDICTION—ADMIRALTY AND VICE*
ADMIRALTY JURISDICTION
 [5 Moore's I. A., 137

See *JURISDICTION—MATRIMONIAL JURIS*
DICATION 4 W. R., P. C., 91
 [6 Moore's I. A., 348

1. Charter of Supreme Court—
*Construction of statute—Statute limiting prerogative of the Crown—Power to grant leave to appeal in criminal case—Under the Bombay Charter of the Supreme Court, 8th December 1823, that Court was invested with full and absolute powers to allow or deny an appeal in criminal cases, and no power was reserved to the Crown by such Charter to grant leave to appeal in such cases, such power being only reserved as to civil cases. The case of *Christian v. Cowan*, 1 P. W., 323, observed on. *QUEEN v. STRICKSON* 3 Moore's I. A., 488*

QUEEN v. EDLIDGE BISHAMJEE

[3 Moore's I. A., 468

The Charter, having been granted by the Crown by force of an Act of Parliament, must be construed

SUPREME COURT, BOMBAY—continued

with reference to the powers conferred by the Act, even though the prerogative of the Crown were limited by such construction. *QUEEN v. BULWER BISHAMJEE* [3 Moore's I. A., 468

2. Construction of Charter—Law of limitation—English law—The Charter of 8th December 1823 which created the Court, provided that "in all matters of contract and party, the law of the country shall prevail, or by such laws and usages as it should have been determined by if the same had been the 3rd section

accommodating the same to their situation, usages, and customs, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice"

...ment of the Court on such

the fact to raise an objection to the jurisdiction exercised by the English law of limitations. *BUCKMAN v. LULLOONHOFF MORTIMER*

[5 Moore's I. A., 234

3. Jurisdiction—Admission of attorneys.—The Supreme Court, Bombay, had no jurisdiction to admit persons as attorneys and solicitors to practise in the Courts there, except such as were qualified in the manner pointed out in the Bombay Charter and Letters Patent of 1823 establishing the Court, viz., those who had been admitted in the Courts at Westminster or were practising in the Recorder's Court, Bombay, at the time of the publication of the Charter. *MORDAN v. LEXEN*

[3 Moore's I. A., 423

4. Suit for partition of property out of jurisdiction.—The late Supreme Court (Bombay) had no power to decree a partition of ancestral property situate beyond the limits of its jurisdiction. *RANCHANDRA DADA NAIK v. DADA MAHADEY NAIK* 1 Bom. Ap., 76

5. Suit concerning revenue—Government quit rent—Suit against Collector of Revenue for distraint.—By the Charter

SUPREME COURT, BOMBAY—concluded.

of the Supreme Court, Bombay, of December 1825, that Court was prohibited from entertaining any suit in any matter concerning the revenue under the management of the Governor and Council or any act done in the collection thereof. In an action of trespass brought against the Collector of Revenue at Bombay for distraining for arrears of Government "quit-rent,"—*Held*, reversing the judgment of the Bombay Court, that the "quit-rent" was part of the revenue of the Company at Bombay, and the Court therefore had no jurisdiction. *SPOONER v. JUDDOW*
[4 Moore's I. A., 353]

SUPREME COURT, CALCUTTA.

1. ——— *Carrying on business.*—An inhabitant of Benares, trading at Calcutta and having a house of business there, held to be subject to the jurisdiction of the Supreme Court. *JANOKEY DOSS v. BINDABUN DOSS*

[3 Moore's I. A., 175]

2. ——— *Jurisdiction of Criminal Court—Party privy to misdemeanour committed within jurisdiction.*—Under the general jurisdiction of the Supreme Court at Calcutta, a person, though resident at Benares, was liable to its jurisdiction, if privy to, and co-operating in, a misdemeanour committed within it. Where, therefore, a party resident at Benares was indicted with others before the Supreme Court for a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law, and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was held by the Judicial Committee that the offence having been completed within the jurisdiction of the Supreme Court at Calcutta, that Court had rightly assumed jurisdiction over the parties privy to it, though from the slight nature of the evidence they directed a new trial. *JANNOKEY DOSS v. KING*

1 Moore's I. A., 67

SUPREME COURT, MADRAS.

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL I. L. R., 8 Mad., 24

1. ——— *Jurisdiction—Order allowing Registrar to institute suit on behalf of infants—Officer of Court entitled to commission—Personal interest in conduct of suit—Stat. 2 & 3 Will. IV, c. 34.*—An order was made on the equity side of the Supreme Court at Madras by which the Registrar, an officer who under the practice of the Court was entitled to a commission of 5 per cent. on all sums of money paid into Court, was allowed by consent of the Court or a Judge to institute proceedings for the benefit of infants where it appeared their property was unprotected. *Held*, in a case in which he was allowed to file a bill on behalf of certain such infants, that the order being made under the general jurisdiction of the Supreme Court, and not under the Stat. 2 & 3 Vict., c. 34, was void, it being against public policy to allow an officer of the Court to institute suits in the conduct of which he might have a direct personal interest. *KERAKOOSSE v. SERLE*

[3 Moore's I. A., 329]

SUPREME COURT, MADRAS—concluded.

2. ——— *Equitable jurisdiction in suits relating to charitable funds.*—The Supreme Court, Madras (established by the Madras Charter, 1800), had an equitable jurisdiction similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England over charities. *ATTORNEY GENERAL v. BRODIE*

[4 Moore's I. A., 190]

SURBORAKARI TENURE.

See LAND TENURE IN ORISSA.

[I. L. R., 11 Calc., 699]

SURETY.

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1. LIABILITY OF SURETY . . .	9085
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See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL AND SURETY.

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See GUARANTEE . I. L. R., 6 Mad., 406

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See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . . .

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See CASES UNDER PRINCIPAL AND SURETY.

See CASES UNDER RECOGNIZANCE TO APPEAR.

See CASES UNDER SECURITY FOR GOOD BEHAVIOUR.

— Agreement to become, on deposit of security.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

[I. L. R., 1 All., 751]

— Discharge of—

See BILL OF EXCHANGE.

[I. L. R., 3 Calc., 174]

See MINOR—BOMBAY MINORS ACT (XX OF 1864) . I. L. R., 19 Bom., 245

See CASES UNDER PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

— Liability of—

See BOND . . . 9 B. L. R., 364
[14 Moore's I. A., 86]

— of defaulting tenant, Suit against—

See RES JUDICATA—PARTIES—PRO FORMA DEFENDANTS . 3 B. L. R., Ap., 37

SURETY—continued

Suit by, against principal for money paid on his account

See SMALL CASE COURT, MOPCHAIL—JURISDICTION—CONTRIBUTION

[B L R, Sup Vol, 691]

1 LIABILITY OF SURETY

1. ——— Duration and extent of liability.—A surety must be taken to have entered into his contract only for the time during which the relation created by the instrument of suretyship exists and with reference only to the person to whom he made himself responsible. *MONIR NARAIN v. SHAW* 25 W. R, 260

2. ——— Security bond for restitution of property taken under decree—Liability of surety where decree is reversed on appeal—

liable for the fulfilment of the decree, not only of the Court of Regular, but also of that of the Court of Special Appeal. *NARAYAN DEV v. GADAYAN DILSHIT* 10 Bom, 1

3. ——— Liability of guarantor for gomashita—Death of surety—Where a

during the period of the guarantee apply to a time after the guarantor's death when all power of advising or controlling the gomashita had ceased. *TAYL & Co v. AMORABUTY HOSSEIN* [20 W R, 12]

4. ——— Civil Procedure

against him jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs 12 8 annas

that they bound themselves to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of Rs 12 8 annas

He did in the same case on appeal under the Letters Patent that the obligation of the sureties was not confined to the first decree of the Appellate Court, which it passed upon

SURETY—continued.**1. LIABILITY OF SURETY—continued**

5. ——— Extent of liability—Security

his own free will and pleasure pledged a certain

amount of the amount of the security

sums shown to have been misappropriated he could not be held liable for losses which accrued to the Municipality from misconduct on the part

ALLAHABAD

6. ——— Withdrawal of

security thus allowed to be withdrawn money is permitted to remain in the hands of sureties in order to its being applied to the purpose to secure which they become sureties it is the duty of each as between himself and co-sureties to see that the money is not misapplied. *WOOD v. MIT FOR WEE CHANG* 15 W. R., 185

7. ——— Suit against surety of Daxir by party whose property has been misappropriated by Daxir—The surety of a Daxir who had entered into the usual bond of indemnity with the Collector of the district against all losses caused by the Daxir during the tenure of his office was held not liable, at the suit of a person whose property had been misappropriated by the Daxir to make good any loss sustained by such person. *BOHA GORA CHOWDHURY v. BHARAGANESH DAS* [B L R, Ap, 29; 18 W. R., 250]

8. ——— Civil Procedure Code 1882, s. 536—Execution proceedings—The liability of a surety under s. 536 of the Civil

SURETY—continued.**1. LIABILITY OF SURETY—continued.**

Procedure Code ceases when the proceeding taken in execution of a decree wherein the security was furnished comes to an end. *LALJI SAHAY v. ODOYA SUNDARI MITRA*. I. L. R., 14 Calc., 757

9. ————— Judgment-debtor

applying to be declared an insolvent—Civil Procedure Code, ss. 336, 344.—S on the 16th January 1886 obtained a decree for a certain sum of money against C. In execution of that decree C was arrested on the 28th January, and upon his being brought before the Court he expressed his intention of applying to be declared an insolvent under the provisions of Ch. XX of the Code of Civil Procedure, and he was thereupon released upon furnishing security, under the provisions of s. 336 of the Code. K became surety for C and executed a bond undertaking to produce C at any time when the Court should direct him so to do, and in default of so producing him to pay the amount of the decree, and standing security for C's applying to be declared insolvent. On the 19th February C filed his petition to be declared an insolvent before the District Judge under s. 344 of the Code, and on the 11th May 1886 his petition was dismissed owing to his non-appearance. S thereupon applied for execution of the decree against K. Held that K was released from his obligation under the bond executed. *KOYLASH CHANDRA SHAHA v. CHRISTOPHORIDI*

[I. L. R., 15 Calc., 171]

10. ————— Civil Procedure

Code, ss. 336, 344—Judgment-debtor applying to be declared an insolvent.—A person who executes a bond undertaking to produce a judgment-debtor at any time when the Court should direct him to do so, and standing security under s. 336 of the Civil Procedure Code for the judgment-debtor's applying to be declared insolvent, is released from his obligation under the bond when the judgment-debtor files his petition under s. 344 to be declared insolvent. *Koylash Chandra Shaha v. Christophoridi, I. L. R., 15 Calc., 171*, approved. *RAMZAN v. GERARD*

[I. L. R., 13 All., 100]

11. ————— Civil Procedure

Code (1882), s. 3-6—Bond for production of insolvent judgment-debtor—Conditions in bond unprovided for by s. 336.—Where in a bond under s. 336 of the Code of Civil Procedure, besides the usual covenants to produce the judgment-debtor before the Court, and that the judgment-debtor would apply to be declared an insolvent, further stipulations were contained as to what should happen if the judgment-debtor's application to be declared insolvent were refused, it was held that the latter stipulations were not such as were contemplated by s. 336, and could not be enforced under that section. *JANKI DAS v. RAM PARTAB*. I. L. R., 16 All., 37

12. ————— Civil Procedure

Code (1882), s. 336—Judgment-debtor's application to be declared an insolvent—Release of the surety.—A person standing surety for a judgment-debtor under s. 336 of the Civil Procedure Code (Act XIV of 1882) is released from his obligation

SURETY—continued.**1. LIABILITY OF SURETY—concluded.**

when the judgment-debtor has applied to be declared an insolvent. *Koylash Chandra Shaha v. Christophoridi, I. L. R., 15 Calc., 171*, and *Ramzan v. Gerard, I. L. R., 13 All., 100*, followed. *DWARKADAS PARSHOTAMDAS v. ISABHAI DAUDEKHAN*

[I. L. R., 19 Bom., 210]

13. ————— Surety for minor

—Contract Act (IX of 1872), s. 128.—A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary is liable to be sued on it, whether the contract of the minor is considered to be void or voidable. *KASHIBA v. SHRIPAT NARSHIV*. I. L. R., 19 Bom., 637

2. ENFORCEMENT OF SECURITY.**14. ————— Mode of enforcement—Act**

XXIII of 1861, s. 8—Surety-bond—Execution.—A surety-bond taken by the Court under s. 8 of Act XXIII of 1861, after judgment had been pronounced, could be enforced under s. 204 of Act VIII of 1859. *ABDUL KARIM v. ABDUL HQ KAZEE*

[8 B. L. R., 205; 15 W. R., 21]

15. ————— Execution of

decree against surety—Surety-bond for payment of costs under s. 342.—A bond given as security for costs under s. 342 of Act VIII of 1859 could be enforced in a summary way by proceedings in execution. *CHUTTERDHAREE LALL v. RAMBELASHEE KOER*

[I. L. R., 3 Calc., 318; 1 C. L. R., 347]

16. ————— Civil Procedure

Code, 1859, s. 204—Execution of decree against surety—Stay of execution on security being given.—Where a sale in execution of a decree was stayed on the security given by a third party, Held that, on default by the defendant, the decree could not be summarily enforced against such surety under s. 204 of Act VIII of 1859. *GAJENDRANABAYAN ROY v. HEMANGINI DASI*

[4 B. L. R., Ap., 27; 13 W. R., 35]

17. ————— Civil Procedure

Code, 1859, s. 204—Sureties under Civil Procedure Code, 1859, ss. 76, 83—Sureties after decree.—S. 204, Act VIII of 1859, applied to cases such as that of parties who became sureties under s. 76 or s. 83, but not to parties who became securities after a decree was passed. *RAM KISHAN DOSS v. HURKHOO SINGH*. 7 W. R., 329

Rejecting a review in *HURKHOO SINGH v. RAM KISHAN*. 8 W. R., Mis., 44

18. ————— Civil Procedure

Code, 1859, s. 204—Compromise embodied in decree—Execution against surety.—A compromise embodied in a decree was to the effect that defendant should pay to plaintiff the principal sum within a specified period, and that, if he (defendant) were successful in another suit against a different party, he would also pay the interest. He succeeded in his suit in the first Court, but his suit was dismissed on appeal. The judgment-debtor subsequently paid the

SURETY—continued.**2 ENFORCEMENT OF SECURITY—continued.**

principal but was afterwards arrested, and *if* *if* became surety for his production and for the payment of the interest if the order of the Munsif releasing the judgment debtor were set aside on appeal. *Held* (by MAHON, J.) that the decree on the compromise was not one upon which execution could be carried out at any rate for the sum which was only conditionally due as the inquiry relative to the fulfilment of the condition could only be made in a regular suit; and that execution could not be

of a decree or any part thereof. **IO LAKEE LALL v. MAHOMED HOSEIN KHAN**. 14 W. R. 63

19. Civil Procedure Code, 1859, s. 204—Surety for performance of decree—Suit on surety bond.—When a person has become liable as surety for the performance of a decree s. 204 of Act VIII of 1859 gives a remedy to the decree-holder against the surety in addition to any remedy which he may have on the surety-bond. It does not prevent the decree-holder from bringing a suit on the surety bond to enforce the contract made with him by the surety, and the lien on the property mortgaged to secure the performance of that contract. **ABDUL KADIR v. HUSEIN MOHAMMAD**. 6 N. W. 281

20. Civil Procedure Code, 1859, s. 201—Surety executing bond for payment of decrees by instalments—Alteration of terms of decree.—Where, by an arrangement sanctioned by the proper Court, the terms of a decree were varied, and provision was made for its payment by instalments for the payment of a portion of which instalments a surety executed a bond hypothecating his property. *Held* that the terms of s. 201 of the Civil Procedure Code were not applicable to such an arrangement. **CHANDER DEVI v. HUSEIN ALI**. [3 N. W. 88]

21. Civil Procedure Code, 1877, ss. 210, 253—Execution of decree against surety—Payment of decree by instalments.—A judgment-debtor whose property was about to be sold appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so. Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year and forwarding such bond. The District Judge ordered the sale to be postponed and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made an order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year. The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against

SURETY—continued**■ ENFORCEMENT OF SECURITY—continued.**

such surety. *Held* that, inasmuch as the decree-holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s. 210 of Act X of 1877 were not applicable, and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s. 253 of Act X of 1877. **CHANDAN KUAN v. TIRKHA RAM**. 1 L. R. 3 All. 809

22. Civil Procedure Code, 1859 s. 253—Surety for execution of appellate decree, Remedy against.—In 1874 the execu-

beliefs. *Held* that the judgment creditor could not proceed summarily against the surety under the provisions of s. 253 of the Code of Civil Procedure, 1859. **DALALI v. RAMASAMI**. 1 L. R. 7 Mad. 294

23. Civil Procedure Code, 1859, s. 253—Execution of decree against surety.—A surety entered into a bond undertaking to produce certain debt bonds in case the defendant in a suit should fail to produce them, or to pay the amount mentioned therein. Upon an application being made that execution should issue against the surety. *Held* that a bond so worded did not make the surety liable for the performance of the decree so as to bring the case within s. 253 of the Code of Civil Procedure, and that the liability of the surety could not be enforced in execution. **NARA YANAMMA v. RAMAYYA CHETTI**. [1 L. R., 23 Mad. 268]

24. Civil Procedure Code, 1859, s. 204—Order cancelling security bond.—Where a person became a surety in the course of the proceedings on an appeal to pay all such sums as might be decreed against the plaintiff on appeal, the decree when passed could be executed against the surety under s. 201 of the Civil Procedure Code, and an appeal would lie from an order made in execution of such decree against the surety. Where a person became surety, and gave a security bond undertaking to pay all sums of money that might be decreed against the plaintiff in the defendant's appeal, and the appeal was dismissed for default, and on the application of the plaintiff the Recorder made an order cancelling the bond, and returned it to the surety without notice to the defendant, and afterwards the defendant's appeal was on application restored, and a decree passed against the plaintiff. *Held* that the Recorder's order was invalid, and execution could issue against the surety notwithstanding that order. **AKHUR RAMANA v. ANAND KOTASWAMI**. [7 L. R. 81; 15 W. R. 538]

SURETY—continued.**2. ENFORCEMENT OF SECURITY—continued.****25.**

Security for restitution of property taken in execution—Reversal of decree—Execution against surety—Civil Procedure Code, 1882, ss. 253, 545, 546.—S. 25³ of the Civil Procedure Code contemplates a suit pending at the time security is given for performance of the decree, and does not apply to a case where the litigation in the Courts of first instance and of first appeal has ended, and no second appeal had been instituted in the High Court when security is given. The holder of a decree affirmed on appeal by the District Court took out execution to recover costs awarded. Costs were deposited by the judgment-debtor and paid to the decree-holder and a surety gave a bond by which he undertook to refund the amount to the judgment-debtor in the event of the latter succeeding in appeal to the High Court and of the decree-holder failing to repay him. The judgment-debtor subsequently filed an appeal to the High Court and was successful, and he then applied in the execution department to recover the amount from the surety. *Held* that the Court executing the High Court's decree had no jurisdiction to execute it against the surety. *HARDEO DAS v. ZAMAN KHAN*

[I. L. R., 8 All., 639]**26.**

Execution of decree against surety pending appeal.—*H* obtained a decree in the High Court against *S* for certain moveable and immoveable property. *S* appealed to the Privy Council. While that decree was pending, *H* applied for the execution of her decree, and *N* became her surety for Rs 10,000. The decree, however, was not executed. The Privy Council reversed the decision of the High Court and dismissed the suit of *H* with costs. *S* then sought to execute his decree for costs against *N*, the surety. *Held* that *N* was not liable. *IN THE MATTER OF THE PETITION OF NAFAR (HAND PAL CHOWDHRY)*

[6 B. L. R., Ap., 126]

S. C. NUTTER CHUNDER PAUL CHOWDHRY v. SOORENDRO NATH ROY . . . **14 W. R., 410**

27.

Execution of decree against surety—Civil Procedure Code, 1859, s. 204.—In consideration of the plaintiffs being allowed to proceed with the execution of a decree which they had obtained in the High Court, *A* became surety upon a bond for the payment of what might be due to the defendants by such plaintiffs in the event of their decree being reversed or modified by the Privy Council, to which an appeal was then pending. *Held* that the summary procedure under s. 204 of Act VIII of 1859 might be enforced against *A* as such surety. Compare Act X of 1877, s. 253. *CHUNDER NANT MOOKERJEE v. RAY COOMAR COONDOO* . . . **3 C. L. R., 505**

28.

Civil Procedure Code, 1877, s. 253—Execution of decree against surety—Execution of decree of Privy Council—Security for costs of respondent—Civil Procedure Code, 1877, s. 610.—An appeal was preferred to Her Majesty in Council from a final decree

SURETY—continued.**2. ENFORCEMENT OF SECURITY—continued.**

passed on appeal by the High Court, and *B* and certain other persons on behalf of the appellant gave security for the costs of the respondent. Her Majesty in Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against *B* and the other persons as sureties. *Held* by *STUART, C. J.*, *PEARSON, J.*, and *OLDFIELD, J.*, that, under ss. 610 and 253 of Act X of 1877, such order could be executed against the sureties. *Per SPANKIE, J.*, and *STRAIGHT, J.*—*Contra.* *BANS BAHADUR SINGH v. MUGHLA BEGAM*
[I. L. R., 2 All., 604]

29.

Appeal to Privy Council—Security for costs of respondent—Execution of decree against surety—Civil Procedure Code (Act XIV of 1882), ss. 253, 602, 603, 610.—A plaintiff, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon *A*, on behalf of the appellant, executed a security bond for the costs of the respondent. The appeal was dismissed with the costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of *A*, the surety (who died in the meantime),—*Held* that the liability of the surety under the security bond could not be enforced in execution of the decree of Her Majesty in Council. *Bans Bahadur Singh v. Mughla Begam, I. L. R., 2 All., 604*, dissented from. *RADHA PERSHAD SINGH v. PHULJURI KOER* . . . **I. L. R., 12 Calc., 402**

30.

Execution of decree against surety—Surety for costs of appeal—Separate suit—Summary procedure—Civil Procedure Code, 1882, ss. 253, 549.—S. 253 of the Civil Procedure Code is not applicable to a surety who has become security in an Appellate Court. A security-bond, therefore, executed by a surety on behalf of appellant for the costs of an appeal under s. 549 of the Code, cannot be summarily enforced against the surety in the execution-proceeding: the remedy is by separate suit. *Bans Bahadur Singh v. Mughla Begam, I. L. R., 2 All., 604*, dissented from. *Radha Pershad Singh v. Phuljuri Koer, I. L. R., 12 Calc., 402*, followed. *KALI CHARUN SINGH v. BALGOBIND SINGH* . . . **I. L. R., 15 Calc., 497**

31.

Surety for amount of decree pending appeal—Execution of decree—Separate suit—Civil Procedure Code, 1882, ss. 244, 253, and 545.—Where a surety has become security for the appellant in an Appellate Court under s. 545 of the Code of Civil Procedure, the security bond cannot be enforced in execution of the decree under s. 253, but a separate suit must be brought against the surety. *Kali Charun Singh v. Balgobind Singh, I. L. R., 15 Calc., 497*, referred to. *TOXHAN SINGH v. UDWANT SINGH*
[I. L. R., 22 Calc., 25]

32.

Civil Procedure Code, 1882, ss. 253, 545, 552, and 553—Execution of decree—Security for performance of decree of

SURETY—continued**2. ENFORCEMENT OF SECURITY—continued**

Appellate Court—Method of enforcing such security—Where in an appeal security has been given to the Appellate Court for the due performance of such decree as it may pass, the decree-holder may enforce such security in the manner provided for by s. 253 of the Code of Civil Procedure. *Bans Bahadur Singh v. Mughla Begam*, I L R, 2 All, 601, followed *Thirumala v. Ramayyar*, I L R, 13 Mad, 1, and *Venkopra Naik v. Basingappa*, I L R, 12 Bom, 411, approved *Kali Charan Singh v. Balgobind Singh*, I L R, 15 Cal, 497, and *Tochan Singh v. Udgant Singh*, I L R, 22 Cal, 25, dissented from *JANKI KUMAR v. SUREP RAY*

[I L R, 17 All, 99]

83 ————— *Execution of decree against surety—Security for due performance of appellate decree, Enforcement of—Civil Procedure Code (1882, as amended by Act VII of 1885), s. 516*—A security bond given by a third party for the due performance of the decree of the Appellate Court under s. 516 of the Civil Procedure Code cannot be enforced in execution of that decree. *Radha Pershai Singh v. Phulgaru Aker*, I L R, 12 Cal, 402, *Kali Charan Singh v. Balgobind Singh*, I L R, 15 Cal, 497, and *Takhan Singh*

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84 ————— *Execution of decree—Surety*—A suit was instituted by C against D & S in the Hooghly Court and was dismissed with costs. On appeal by the plaintiff, the defendants obtained an order in the High Court calling on C to give security for costs in the Court below and on

s. 214, Act VIII of 1859, by attachment and sale of the house, the Court granted the application. *HIMALAYAN DEAL v. CHANDLER* 9 B L R, Ap. 17

35 ————— *Civil Procedure Code, ss. 253 and 583—Stay of execution of decree appealed against on giving security—Surety for fulfilment of appellate decree—His liability—Mode of enforcing it—Execution proceedings—Separate suit*—Under Act VIII of 1859 and the supplemental Act XVIII of 1861, the ordinary mode of enforcing payment by a surety was by summary process in execution, not by means of a separate suit. This was so equally whether the security had been taken in the course of the original suit or of the appeal. The present Code of Civil Procedure (Act XIV of 1882) makes no alteration in the law on this subject. Reading s. 253 with s. 583 of Act XIV of 1882 it is clear that the Court has the power to proceed against a person who has become a surety

SURETY—continued**2. ENFORCEMENT OF SECURITY—continued**

under s. 54C, for the fulfilment of the decree in appeal in the same way as against a surety who has become liable under s. 253 to satisfy a decree of a Court of first instance. The words "in an original suit" in s. 253 may be treated as a superfluous expression. *CHAKRA NATH v. BASINGAPPA* [I L R, 12 Bom, 411]

36 ————— *Security for costs—Security*

—*Civil Procedure*

—*Act VII of 1*

of 1869, s. 6—

applied for leave to execute his decree (which was one for costs) against a person who had become security for the costs of an appeal which had been

ring to s. 6 of the General Clauses Act rejected the application on the ground that proceedings against the surety had been commenced before Act VII of 1869 had come into force. Held on appeal that the application should have been allowed. *ABDUL WAHAU v. FARROOQYASSA*

[I L R, 16 Cal, 323]

37 ————— *Civil Procedure*

Code, 1882, ss. 253, 516, 583—Surety for the due

performance of appellate decree—Mode of enforcing

liability of such surety—Execution of decree—

When security had been given in behalf of the respondent to an appeal under s. 516 of the Code of

Civil Procedure for the due performance of the decree of the Appellate Court and the appeal had been

38 ————— *Civil Procedure*

Code, 1882, s. 336—Surety, Liability of—Execution

proceedings—The liability of a surety under s. 336

of the Civil Procedure Code ceases when the proceed

ing taken in execution of a decree wherein the

security was furnished comes to an end. D, a

judgment debtor was committed to jail on the 21st

August 1881 and he applied, under s. 73, of

the Civil Procedure Code to be released. On the

16th of November 1881 B and C stood security for

him under the provisions of s. 336 of the Civil

Procedure Code that he would appear when called

on, and that he would within one month apply

under s. 311 to be declared an insolvent, and D

was thereupon released. Instead of applying under

s. 311 to be declared an insolvent, he applied to

have the decree, which had been obtained ex parte,

set aside. This application was disallowed and the

decree-holder was directed to take further steps

SURETY—continued.**2. ENFORCEMENT OF SECURITY—continued.**

On the 21st of February 1885 the application for execution of the decree was struck off. The decree-holder on the 20th of July made a fresh application to execute the decree against the sureties, unless they should produce the judgment-debtor in Court. *Held* that the power reserved to the Court, under s. 336 of the Civil Procedure Code, to realize the security in execution of the decree could not be exercised when the execution-proceedings wherein the security was furnished was no longer in existence.

LALJI SAHAY v. ODOYA SUNDERI MITRA

[I. L. R., 14 Calc., 757

39. ————— Right of sureties

to appeal—Extent of their liability—Attachment before judgment—Security under s. 484 of Civil Procedure Code (Act XIV of 1882)—Decree—Stay of execution by Appellate Court—Fresh security under s. 545 of Civil Procedure Code (Act XIV of 1882)—Liability of original sureties.—A surety against whom a decree is sought to be enforced under s. 253 of the Code of Civil Procedure (Act XIV of 1882) has a right of appealing against an order made in the execution-proceedings. A and B became sureties under s. 484 of the Code of Civil Procedure (Act XIV of 1882) for the production of property attached before judgment by the Court of first instance. Under their surety-bonds they were bound, in default, "to pay to the said Court such sum as the said Court may adjudge against the said defendant." The Court of first instance passed a decree in the plaintiff's favour for Rs 229-14-0. Against this decree both parties appealed to the District Court. In that Court the defendant obtained an order for stay of execution of the original decree on his furnishing security, under s. 515, "for the due performance of such decree or order as may ultimately be binding on him." He accordingly gave fresh security. The Appellate Court passed a decree in plaintiff's favour for Rs 800 and costs. Thereupon the decree-holder sought to enforce the appellate decree against the sureties A and B under s. 253 of the Civil Procedure Code. The sureties contended, first, that the original decree having merged in the appellate decree, they were not liable at all under their bond which related only to the decree of the Court of first instance; secondly, that they were responsible only for so much as was by the original decree adjudged against the defendant; and, thirdly, that their original liability had been extinguished by reason of execution having been stayed without their assent by the Appellate Court on defendant's furnishing a fresh security. *Held* that the liability of the sureties could not properly be extended beyond the amount, including costs, awarded to the plaintiff by the Court of first instance. That and no other sum was such "as the said Court may adjudge against the said defendant." The security given to the Court of first instance was for the satisfaction of its decree, not the possible decree of a higher Court. If an appeal was made, it was left to the Appellate Court to regulate the terms on which it would take security for the execution of its own decree. *Held* also that, so soon as the decree of the Court of first instance was made, the liability

SURETY—continued.**2. ENFORCEMENT OF SECURITY—concluded.**

of the sureties was fully incurred, and they were severally bound to place at the disposal of the said Court, when required, the property specified in their bond, or, in default, to pay such sum as the said Court should adjudge against the defendant. This liability, having been incurred, was not extinguished by the fact that an appeal had been brought against the decree. If the amount adjudged by the decree was reduced in appeal, their liability would be diminished to a like extent; or, if the decree was reversed, their liability would be reduced to nothing, but their liability did not cease, because the decree of the first Court merged in that of the Appellate Court. *SULEMAN v. SHIVRAM BHIKAJI* I. L. R., 12 Bom., 71

40. ————— Surety after

passing of decree—Mode of realization of security—Civil Procedure Code, s. 253—Jurisdiction of Revenue Court.—Where, after the passing of a decree for arrears of rent, a friend of the judgment-debtor entered into a security-bond whereby he rendered himself personally liable and hypothecated a share in certain zamindari property to secure the performance of the decree, it was held that the obligation created by such security-bond could not be enforced by a Court of revenue by the sale of the hypothecated property. *BEHARI LAL v. JAGNANDAN SINGH* . . . I. L. R., 19 All., 247

41. ————— Surety under
Civil Procedure Code (1882), s. 349—Surety for insolvent judgment-debtor—Default of principal—Liability of surety—Mode of enforcing liability of surety.—The Civil Procedure Code (Act X. V of 1882) provides no means for enforcing in execution a surety-bond passed under s. 349. The proper course of the plaintiff is to obtain an assignment of the bond with a view to suing on it. *MINGALE ANTOINE KANE v. RAMCHANDRA BAJE* . I. L. R., 19 Bom., 694

42. ————— Liability of
surety after decree passed in original suit—Civil Procedure Code (Act XIV of 1882), s. 253 Execution of decree against surety.—An *ex-parte* decree was set aside on condition that the defendant should find a surety who would be responsible for any amount that might be found due from the defendant by any decree to be subsequently made in the suit. On an application to execute the decree, which was subsequently made against the defendant by the decree-holder both against the defendant and the surety, objection was taken to the execution by the surety, and was allowed by the Court below. *Held* that under s. 253 of the Code of Civil Procedure the decree-holder was entitled to take out execution against the surety. *SONARUN SHAHA v. DINO NATH SHAHA*

[I. L. R., 28 Calc., 222

3 C. W. N., 228

3. DISCHARGE OF SURETY.

43. ————— Appearance of debtor—Act
XVIII of 1861, s. 8 Discharge of defendant on bail.—Where a Court during the pending of an

SURETY—continued**■ DISCHARGE OF SURETY—continued**

inquiry under Act XVIII of 1861 s 8 allowed the defendant to be at large upon security, for his appearance when called upon and when the court had concluded the inquiry it was found that the defendant had appeared the liability of the surety was held to be at an end **BALMER LAWRIE & Co v HURSE NARAIN PODDAR** 34 W R, 202

44 **Change in circumstances under which security was given—Guarantee for good conduct of gomashia—Transfer of property guaranteed—Where two parties executed a surety bond addressed to J, R, and M,**

when J and M ceased to have any interest in the property, there was such entire change in the nature of the service that the sureties' liability did not continue, and they were not liable to be sued upon their bond **RAJ KUNSER MOOKERJEE v ISSUER CHANDER MOOKERJEE** 33 W R, 90

45 **Alteration of position and risk of salt darogah—Liability of surety for performance of duties—When a salt darogah deposits security for the due performance of his duties to be appropriated by Government in case of loss to the State from his failure to perform them and the Government, without his consent alters his position and risk, such alteration releases him from his engagement as surety** **SUBH NARAYAN JAVNER v GOVERNMENT** W. R., 1864, 138

46 **Civil Procedure Code ss 339, 341—Insolvency—Surety for insolvent judgment debtor filing petition—One B became surety under s 339 of the Code of Civil Procedure on**

declaration of insolvency of A and B jointly, out of the surety's asking the Court to declare him discharged of his liability the Court refused to do so **Held** that the surety's liability was discharged by the judgment debtor applying to be made an insolvent **Koylath Chandur Shikha v Christophori I L 15 Cal, 171, referred to BANWA MAL v JAMWA DAS** I. L. R., 15 All, 183

47 **Acceptance of further security—Security signed by surety—de surety bond—A security, voluntarily signed, existing upon the record and even taken off the file, is a valid and subsisting security. The intentions and motives of the obligor in giving the security must be judged by what is mentioned in the instrument. The acceptance of the separate security of one surety is not invalidated by the acceptance of separate securities of two other sureties.** **GOPAL INDER NARAIN ROY v JAGAR NATH GHOS** [5 W. R., P. C, 120] Moore's I. A., 311

48 **Notice of intention to cease to be surety—Security for payment of rent—A**

SURETY—concluded**3 DISCHARGE OF SURETY—concluded**

surety for the due payment of rent by a third person must if he wish to discharge himself, give notice to the person to whom the guarantee has been given. **GUNESH KOOKER v COMBUTOO-MISSA BHOOM** [8 N. W., 77]

4 MISCELLANEOUS CASES

49 **Surety of lessor afterwards becoming his partner—Suit for illegal ejectment of lessee—Suit for damages—Where a person becomes surety for the due performance by the lessee of the obligation contained in a lease for a term of years and afterwards becomes a partner with the lessee, and the lessee evicts the lessor before the expiration of the lease—Held that a suit would lie by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor** **BHARADWAJ ROY v RAM TURNOO BOSE** 7 W R, P. C, 16

S C BHARADWAJ ROY v ATUL MONJOORE DASIAH 4 Moore's I. A., 321

50 **Suit by surety after satisfaction of bond—Cause of action—Limitation—The plaintiff executed a bond jointly with a servant of the defendants on 10th July 1861. The proceeds were expended for the defendant on the 20th August 1861. The creditor obtained a decree upon the bond for principal and interest which the plaintiff satisfied by two payments made on 4th July 1866 and 30th June 1869 respectively. He brought a suit against the defendant for the amount on 22nd June 1869. Held that the plaintiff could maintain his suit against the defendant for the amount paid by him and that the suit was not barred by the law of limitation** **DHAGIRATH ADHIKARI v TARINI CHANDRA PAKRASHI** [7 B L R., 35] 15 W. R., 413

Reversing on appeal **S C BHAGIRATH ADHIKARI v TARINI CHANDRA PAKRASHI**

[14 W. R., 174]

SURRENDER OF TENURE.

See CASES UNDER LANDLORD AND TENANT—ABANDONMENT—RELINQUISHMENT, OR SURRENDER OF TENURE

See LANDLORD AND TENANT—LIABILITY FOR RENT I. L. R., 10 Cal., 700

See LANDLORD AND TENANT—PAYMENT OF RENT—NOT PAYMENT [I. L. R., 18 Bom., 250]

SURVEY.

1 **Survey proceedings, Power of Collector to re-open—Where a survey is once concluded the map completed, and the thakbust proceedings brought to a close a Deputy Collector has no authority to re-open the proceedings and if he does so on the application of one party and issues a notice to the opposite party, the latter is not bound**

SURVEY—concluded.

to appear. KALEE NARAIN BOSE v. ANUND MOYRE
GOPTA 21 W. R., 79

2. **Excess lands found after survey — Presumption.** — Where the admitted mileek lands of a raiyat were found by survey to be somewhat in excess of the land re-leased to him by resumption proceedings based on a former survey, it was held that the excess could not be assumed as a matter of course to be māl lands. DINOBUNDHOO SUHAYE v. COURT OF WARDS . . . 11 W. R., 347

SURVEY ACT (BOMBAY).

See BOMBAY SURVEY AND SETTLEMENT
ACT I OF 1865.

SURVEY AWARD.

See CASES UNDER ACT XIII OF 1848.

See CASES UNDER LIMITATION ACT, 1877,
ARTS. 45, 46 (1859, s. 1, CL. 6).

1. ——— **Réquisites for survey award — Decision on bonâ fide contention.** — To constitute a survey award, there must be a decision on a *bonâ fide* contention between the parties after a proper investigation into the points of issue between them. NUBO KISHEN ROY v. GOBIND CHUNDER SEIN . . . [6 W. R., 317]

2. ——— **Decision on fact not disputed — Beng. Reg. VII of 1822 — Summary award.** — The finding of a Survey Deputy Collector that a party has been in possession of certain land for more than a year, where the fact is not disputed, is not a "summary award" under Regulation VII of 1822. RADHAPERSHAD SINGH v. RAMJEEWUN SINGH . . . [11 W. R., 389]

3. ——— **Striking off complaint in Survey Department.** — On a complaint being made in the Survey Department as to a demarcation of land, the Deputy Collector, instead of investigating the circumstances, ordered a local inquiry by an Ameen, and on the plaintiff omitting to deposit the Ameen's fees, struck the case off his file. *Held* that the decision was not an award on which a cause of action could be based. KRISTO CHUNDER DOSS v. SOUDAMONEE DOSSEE . . . 12 W. R., 174

4. ——— **Order of settlement officer without inquiry.** An entry made in the settlement papers was objected to on the merits. The objection was disallowed summarily without inquiry, on the ground that the papers had been drawn out more than a year before the objection was taken. *Held* that such an order was not "an award," inasmuch as it did not adjudicate on the rights of the parties or on the question of possession, and therefore that it was not an order on which a Court could found its judgment rejecting the suit without disposal of the point at issue upon the evidence. HEERA DASS v. HUMMOO SINGH . . . [1 N. W., Part II, p. 17: Ed. 1873, 77]

5. ——— **Act XIII of 1848, Operation of—Effect of award.**—Act XIII of 1848 operates

SURVEY AWARD—continued.

in certain cases to give to a survey award the full effect of a decree of a Civil Court, by taking away from the Courts the power of entertaining any suit for contesting the justice of such award after a limited time. MOKUND MOORAREE BISWAS v. WOOMA CHURN MOOKERJEE . . . 23 W. R., 173

6. ——— **Sanction by Collector — Acceptance of proceedings as correct.** — To make a survey demarcation effective, it is not absolutely necessary that there should be any more special sanction by the Collector than a general acceptance of the survey proceedings as correct. HUNOOMAN CHOWBAY v. BINDHOO TORABA . . . 10 W. R., 336

7. ——— **Right to benefit under award — Persons representing party to award.** — The representatives of a party to a survey award are entitled to the benefits thereof. RAJMOHUN MITTER v. COMMISSIONER OF THE SOONDERBUNS . . . 1 W. R., 344

ALI ASHRAF v. CHONGA GOBIND ROY
[5 W. R., 220]

8. ——— **Effect of award — Act IV of 1840, Award under—Evidence of title.** — An award under Act IV of 1840 between an intervenor and a party other than the plaintiff was no evidence against the plaintiff. AMEERONISSA KHATOON v. JUGGUR NATH ROY . . . 11 W. R., 113

9. ——— **Effect of survey award on purchaser—Evidence of title.** — A purchaser is bound by a survey award passed against the persons from whom he derived his title. ALLYAT v. JUGGUT CHUNDER ROY . . . 5 W. R., 242

10. ——— **Act IV of 1840, Award under.—Semble.** — Where a zamindar let his estate in farm for a term of years, and so delegated the whole of his rights, privileges, and immunities to another person, he was held to become himself bound by an adverse decision under Act IV of 1840, to which the former was a party. LEKHRAJ ROY v. COURT OF WARDS . . . 14 W. R., 395

11. ——— **Act IV of 1840, Award under, failure to set aside.** — *Held* that the plaintiff, having failed to set aside an award made under Act IV of 1840 within the period of limitation, could not claim in opposition to the award. GOPAL NATH v. ABDOL GHANEE . . . 1 Agra, 120

12. ——— **Notice of survey proceedings — Joint proprietors.** — A co-proprietor of a joint undivided estate was held to be bound by a survey award and compromise to which the other joint proprietors were parties when notice of the survey proceedings was served on the proprietors jointly, and not on him individually. HUR LAL ROY v. SOORUJ NARAIN ROY . . . 3 W. R., 7

13. ——— **Proceedings under Act IV of 1840 — Evidence of possession.** — Proceedings under Act IV of 1840, to which both litigants have been parties, was held to be properly treated as evidence between them on the question of possession. RADHA CHURN DASS GOSEAMEE v. AKRANKHOUTEA . . . 20 W. R., 420

KASHEE KISHORE ROY v. BAMA SOONDAREE
DEBIA . . . 23 W. R., 27

SURVEY AWARD—continued

14 ———— *I object as against decree for possession*—A survey award cannot override the decree of a competent Court awarding possession. **HURO NATH ROY v. ANAND CHUNDER ROY** [1 W. R., 329]

15 ———— *Evidence of possession—Evidence of title*—Survey proceedings are evidence of actual possession, and must be regarded as correct, so far as the appearance of the country is recorded thereon, but if questioned in time, are not conclusive on the question of title. **LEELA-UNO SINGH v. MOHENDRO NARAIN SINGH** [13 W. R., P. C., 7]

16 ———— *Proof of possession—Suit to set aside survey award*—In a case for setting aside a survey award which declared the plaintiff and the opposite party entitled to certain

appropriated by him and what by the interiorer separately, for the loss suffered by each party by division, and after that how much, and what, of the remainder is entitled to be held jointly. **TARIVEN KANT LAHOORY v. HANEE MUNDUL** [7 W. R., 203]

17 ———— *Award by superintendent of survey—Evidence of title*—An award by the superintendent of survey is not conclusive evidence of a contested right in a regular suit. **KOTLASH CHUNDER GHOSH v. RAJ CHUNDER HANEE JEE** [13 W. R., 180]

18 ———— *Decis on on Act VI of 1840—Evidence of title*—A decision in an Act IV of 1840 case was no evidence of title on any way or the other. **GUDADHAR v. KOODDOO RAMKOOBAR HOSE** [6 W. R., 165]

19 ———— *Award under Act IV of 1840—Proof of title*—An award under Act IV of 1840 was not sufficient proof of title when the person in whose favour it was given did not maintain his possession under the award before the survey authorities, and allowed his adversary to take actual possession. **GOJUL KISHORE SHARMA v. RAJ KISHEN BIRMAN** [3 W. R., 129]

20 ———— *Suit to set aside award under Act IV of 1840—Proof of title*—In a suit to set aside an award under Act IV of 1840—Held that the plaintiff ought to furnish some decisive proof of his title to justify the Court in disturbing the award of a competent authority, and that his impotent proceedings instituted by Government, which declared only that the lands were unfit for resumption and the forfeit them in the plaintiff's possession, were not such a convincing proof of title. **HANASOONTHAR DALPA CHOWDHURAY v. HANASOONTHAR DALPA CHOWDHURAY v. HANASOONTHAR DALPA CHOWDHURAY** [11 W. R., 436]

SURVEY AWARD—concluded

21 ———— *Award under Beng. Reg. III of 1822, s. 83—Power of Court to set aside award*—Held that an award of arbitrators under s. 33 Regulation III of 1822, could not be set aside by the Courts of Judicature. **HEWEND AIR v. ANAND HOSSAIN** [1 Agra, 267]

22 ———— *Award for more than amount of land claimed—Survey award, if given for more than is claimed is not binding as to the excess*—It is not conclusive as to title. **LELUP NARAIN SINGH v. NARAIN SINGH** [1 W. R., 333]

SURVEY OFFICER.

See CASES UNDER KNOWN SETTLEMENT ACT

See UNDER SETTLEMENT OFFICER

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL

[1 L. R., 21 Cal., 935]

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622

[1 L. R., 21 Cal., 935]

SURVIVORSHIP

See ATTACHMENT—ATTACHMENT BEFORE JUDGMENT [1 L. R., 17 Mad., 144]

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE

[1 L. R., 19 Bom., 338]

[1 L. R., 17 All., 578]

[1 L. R., 23 Cal., 912]

[1 L. R., 22 Mad., 380]

See CONVERTS [1 L. R., 10 Mad., 69]

See COURT FEES ACT, 1870 s. 19D

[1 L. R., 23 Cal., 980]

See GRANT—POWER OF ALIENATION BY GRANTEE [1 L. R., 11 Cal., 1]

See HINDU LAW—INHERITANCE—IMMUTABLE PROPERTY [6 Mad., 93]

[1 L. R., 4 Mad., 250]

[1 L. R., 19 Mad., 451]

[1 L. R., 23 I. A., 128]

See CASES UNDER HINDU LAW—INHERITANCE—JOINT PROPERTY AND SURVIVORSHIP

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—JAGAT PITHS

[1 L. R., 6 Bom., 85]

[15 B. L. R., 10]

[L. R., 2 I. A., 113]

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—AFFILIATED SON

[1 L. R., 17 Mad., 49]

See HINDU LAW—INHERITANCE—SPECIAL LAWS—NIRAYOG

[1 L. R., 10 All., 101]

[L. R., 21 I. A., 17]

SURVIVORSHIP—concluded.

See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS . 3 B. L. R., F. B., 31

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I. L. R., 1 Calc., 228

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See HINDU LAW—PARTITION—REQUISITES FOR PARTITION.

[I. L. R., 19 Mad., 345

See HINDU LAW—PARTITION—SHARES ON PARTITION—GENERAL MODE OF DIVISION . I. L. R., 5 Calc., 142

See HINDU LAW—WILL—CONSTRUCTION—SURVIVORSHIP.

[I. L. R., 15 Bom., 443

I. L. R., 23 Calc., 563

L. R., 23 I. A., 18

See HUSBAND AND WIFE.

[I. L. R., 16 Bom., 630

See REPRESENTATIVE OF DECEASED PERSON.

[I. L. R., 19 Mad., 345

See WILL—CONSTRUCTION.

[I. L. R., 5 Calc., 59

Joint tenancy—Joint speculation on improving land—Real and personal property. —A joint speculation in improving land on a hazard of profit and loss is treated in equity as in the nature of merchandise and *jus accrescendi* not allowed. The survivorship in the case of joint tenancy is not an incident to it in the case of leasehold property and personal estate. *WEBBE v. LESTER* [2 Bom., 55: 2nd Ed., 52

T**TACKING.**

See CASES UNDER MORTGAGE—TACKING.

TALUKH.

Meaning of—

See GRANT—CONSTRUCTION OF GRANT.

[18 W. R., 469

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See LEASE—CONSTRUCTION.

[8 W. R., 391

22 W. R., 326

Succession to—

See CASES UNDER OUDH ESTATES ACT.

See PRIVY COUNCIL, PRACTICE OF—RE-VIVOR OF APPEAL.

[I. L. R., 21 Calc., 997

I. L. R., 21 I. A., 163

TALUKHDAR.

See BOMBAY ACT, VI OF 1862, s. 12.

[I. L. R., 11 Bom., 78, 551

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS. I. L. R., 11 Bom., 551

[L. R., 14 I. A., 89

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[I. L. R., 16 Bom., 408

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See CASES UNDER OUDH ESTATES ACT.

See CASES UNDER OUDH TALUKHDARS RELIEF ACT.

Conduct of, as indicating his successor.

See OUDH ESTATES ACT, 1839 s. 23.

[I. L. R., 3 Calc., 626

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Registered interest of—

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[I. L. R., 3 Calc., 522

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[14 B. L. R., 209

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[1 B. L. R., S. N., 27

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Repairs of—

See CONTRACT ACT, s. 70.

[I. L. R., 18 Mad., 88

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[I. L. R., 12 Mad., 241

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See ZAMINDAR, DUTY OF.

[14 B. L. R., 209

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TARAI REGULATION (IV OF 1876).

See JURISDICTION—SUITS FOR LAND—PROPERTY IN DIFFERENT DISTRICTS.

[I. L. R., 17 All., 483

"TARI."

See CANTONMENTS ACT (III OF 1880), s. 14.

[I. L. R., 15 Calc., 452

TARIFF ACT (VIII OF 1894), s. 10.

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 21 Bom., 623

TAX—concluded.

See MADRAS TOWNS IMPROVEMENT ACT,
1871, ss. 38 AND 85 . 7 Mad., 249
[I. L. R., 1 Mad., 158]

See PENSIONS ACT, s. 4.
[I. L. R., 14 Bom., 573]

See SMALL CAUSE COURT MOFUSSIL—
JURISDICTION—MUNICIPAL TAX.
[I. L. R., 13 Mad., 78]

See STATUTES, CONSTRUCTION OF.
[I. L. R., 1 Mad., 158
8 Bom., A. C., 213]

1. ——— Certificate tax—Neglect to
take out certificate—Fine.—The fine imposed under
s. 17, Act IX of 1868, for neglect to take out a certi-
ficate must not be less than twice the amount for
which such certificate should be taken out. QUEEN
v. RAM GOBIND CHUCKERBUTTY

[2 B. L. R., Ap., 40
11 W. R., Cr., 13]

2. ——— Complaint for neglecting to
take out certificate—Collector also Magistrate.
—Where it is sought to recover the penalty described
in s. 17, Act IX of 1868, from any person who omits
to take out a certificate, the Collector who issued the
notice should prefer a complaint before a Magistrate,
and the Collector cannot prefer the complaint before
himself in his capacity of Magistrate. ANONYMOUS

[4 Mad., Ap., 62]

3. ——— Magistrate, Powers of.—A
Magistrate was held to have acted rightly in dismissing
complaint under s. 17 of Act IX of 1868, because
there was no evidence that the names of the accused
were included in the list mentioned in s. 17. In a
prosecution under this Act, a Magistrate must pro-
ceed in the manner laid down in Ch. XV of the
Code of Criminal Procedure, 1861, and must require
proof of all the facts which go to constitute the
offence. QUEEN v. KHETTRO MOHUN GHOSE

[11 W. R., Cr., 56]

4. ——— Muhtarafa—Trade tax, Zamin-
dar's right to collect—Mad. Reg. XXV of 1802,
s. 4—Mad. Reg. XXV of 1832.—The right of
collecting the muhtarafa of trade tax from artizans
in his zamindari has not been delegated by Govern-
ment to the zamindar of Karvairnagar, and cannot
be legally exercised by his assignees. Quere—
Whether it was competent for Government to dele-
gate the collection of the muhtarafa to zamindars for
their own use. VEDANTA v. KANNIYAPPA

[I. L. R., 9 Mad., 14]

TAXATION OF COSTS.

See ATTORNEY AND CLIENT.
[I. L. R., 3 Calc., 473]

See COMMISSION—CIVIL CASES.
[I. L. R., 15 Bom., 209]

See CASES UNDER COSTS—TAXATION OF
COSTS.

TAXATION OF COSTS—concluded.

See LIMITATION ACT, 1877, ART. 84 (1871,
ART. 85) . I. L. R., 1 Bom., 253
[I. L. R., 7 Mad., 1]

I. L. R., 22 Calc., 943, 952 note

See RULES OF HIGH COURT, BOMBAY—
RULE NO. 183.

[I. L. R., 16 Bom., 152
I. L. R., 17 Bom., 514]

——— Summons for—

See COSTS—TAXATION OF COSTS.
[7 B. L. R., Ap., 50]

See LIMITATION ACT, 1877, s. 4.
[I. L. R., 20 Calc., 899]

TAXING OFFICER.

——— Decision of—

See COURT FEES ACT, s. 5.
[I. L. R., 12 All., 129
I. L. R., 20 Mad., 398
I. L. R., 21 Mad., 289]

——— Discretion of—

See COSTS—TAXATION OF COSTS.
[I. L. R., 24 Calc., 891]

——— Mistake of—

See COURT FEES ACT, 1870, s. 5.
[I. L. R., 15 All., 117]

——— Power of—

See COSTS—TAXATION OF COSTS.
[I. L. R., 15 Mad., 405]

TAZI MANDI CHITTIS.

See CONTRACT—WAGERING CONTRACTS.
[4 Moore's I. A., 339
5 Moore's I. A., 109
6 Moore's I. A., 251]

——— Principal and agent—Gambling
Act (XXI of 1848).—Where the plaintiff had ex-
pended money at the request of the defendant in the
purchase or settlement of tazi mandi chittis,—Held
he was entitled to recover notwithstanding Act XXI
of 1848. KANAYALAL v. CHAGMAL BATTIA
[8 B. L. R., 412]

BHAIRABNATH KHETTRI v. JUMANRAM DHAN-
DARIA 8 B. L. R., 415 note

TEHSILDAR.

See LIMITATION ACT, 1877, ART. 7 (1859,
s. 1, CL. 2).
[1 B. L. R., S. N., 20 : 10 W. R., 260]

TEMPLE.

——— Suits concerning—

See CASES UNDER ACT XX OF 1863.

See HINDU LAW—ENDOWMENT.

See MAHOMEDAN LAW—ENDOWMENT.

See MAHOMEDAN LAW—MOSQUE.

TENANCY.

See CASES UNDER LANDLORD AND TENANT.

— Acknowledgment of—

See CASES UNDER LANDLORD AND TENANT
— CONSTITUTION OF RELATION—AC-
KNOWLEDGMENT OF TENANCY BY RE-
CEIPT OF RENT

— Determination of incidents of—

See CASES UNDER BENGAL TENANCY ACT,
s. 153

See RES JUDICATA—MATTERS IN ISSUE
[I. L. R., 20 Calc., 249]

— Nature of—

See CASES UNDER LANDLORD AND TENANT
— NATURE OF TENANCY

— Relinquishment of—

See CASES UNDER LANDLORD AND TENANT
— ABANDONMENT, RELINQUISHMENT, OR
SURRENDER OF TENURE

TENANCY-AT-WILL.

See LANDLORD AND TENANT—EJECTMENT
— NOTICE TO QUIT

[I. L. R., 3 Calc., 686
24 W. R., 481
8 C. L. R., 60
1 Mad., 108
I. L. R., 10 Bom., 180
I. L. R., 23 Calc., 200
4 C. W. N., 792]

See REGISTRATION ACT, 1877, s. 17.
[I. L. R., 14 Bom., 319]

TENANCY-IN-COMMON.

See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—VESTED AND CONTINGENT
INTERESTS.

[I. L. R., 11 Bom., 69, 573]

See WILL—CONSTRUCTION.
[I. L. R., 15 Mad., 448
I. L. R., 23 Bom., 80]

TENANT.

See LANDLORD AND TENANT.

— Suit against, for share of rent.

See CASES UNDER CO-SHARERS—SUITS BY
CO-SHARERS WITH RESPECT TO THE
JOINT PROPERTY—FINANCEMENT OF
RENT.

TENANT—concluded.

See CASES UNDER CO-SHARERS—SUITS BY
CO-SHARERS WITH RESPECT TO THE
JOINT PROPERTY—KADULIATS.

See CASES UNDER CO-SHARERS—SUITS BY
CO-SHARERS WITH RESPECT TO THE
JOINT PROPERTY—RENT.

TENDER.

See BENGAL RENT ACT, 1860, s. 46.
[I. L. R., S. N., 7: 10 W. R., 101
18 W. R., 79
2 W. R., Act X, 88]

See SMALL CAUSE COURT, PRESIDENCY
TOWNS—JURISDICTION—IMMOVABLE
PROPERTY I. L. R., 17 Mad., 218

See TRANSFER OF PROPERTY ACT s. 83
[I. L. R., 17 Mad., 287]

See TRANSFER OF PROPERTY ACT, s. 135
[I. L. R., 22 Calc., 792
2 C. W. N., 147]

1. — Validity of tender—Contract
Act, s. 39—Tender of interest on mortgage-debt—
Under a mortgage-deed taken to secure the repay-
ment within three years of a sum of Rs. 100 ad-
vanced by the plaintiff, with interest at 15 per cent
from the 2nd July 1873, the date of the mortgage,
it was stipulated that interest should be paid every
six months, but that, if a year's interest should be
unpaid, then the whole amount due for principal and
interest should become payable at once, and also
that the mortgagor might, after payment of interest,
pay towards satisfaction of the principal any sum
not less than Rs. 1,000. The first year's interest was
allowed to get into arrear, but in September 1875 the
defendant went to the plaintiff with Rs. 100, a

interest from the date of the mortgage to the date of
the suit and subsequent interest. Held that the
tender made by the defendant although not valid
according to English law, was valid under s. 39 of the
Contract Act substantially requires that there should
be a genuine and unconditional offer, in case of pay-
ment, to pay unconditionally at a proper place made
by a person in a position to pay. KATY LALL
KHAN v. KHETTESMONEY DASS 5 C. L. R., 105

2. — Offer by letter to
pay debt—A mere offer by a debtor by letter to pay
an amount cannot be treated as a tender either in
law or in equity. In order to stop interest, a strict
tender should be proved. KAMAYA NAIK v. DEYAPA
RUDRA NAIK I. L. R., 23 Bom., 440

3. — Unconditional ten-
der—Costs—In a suit to recover Rs. 323 15-6, the
balance of the price of goods sold, on which an ac-
count had been given to between the parties, it
appeared that the defendant had tendered before
suit a sum of Rs. 613 5, stating in the letter of tender

TENDER—concluded.

that the sum so tendered was the only sum due. At the trial the plaintiff obtained a decree for the full amount claimed by him. *Held*, both in the Court below and on appeal, that the tender was bad, and therefore the plaintiffs were entitled to their costs. *Held per* KENNEDY, J., that the tender was bad, being a tender of part of an entire debt. *Held per* GARTH, C.J. (MARKBY, J., concurring), that the tender was also bad, as the plaintiffs could not have accepted the sum tendered without giving up the remainder of their claim. CHUNDER CAUNT MOOKERJEE v. JODOONATH KHAN

[I. L. R., 3 Calc., 468 : 1 C. L. R., 470]

4. ———— *Tender of part of debt, Rule as to—Plea of tender—Payment into Court.*—The rule laid down in *Dixon v. Clark*, 5 C. B., 365, that the tender of only a part of a debt must be treated as if it had never been made, applies only where the party making the tender admits more to be due than is tendered. A plea of tender before action must be accompanied by a payment into Court after action, otherwise the tender is ineffectual. ABDUL RAHMAN v. NOOR MAHOMED

[I. L. R., 16 Bom., 141]

5. ———— *Agent—Cheque in payment of debt for rent—Suit for rent—Costs.*—The landlord of a house through his agent sent in rent-bills to his lessee. The lessee gave the agent a cheque payable to her attorney for the amount demanded. The attorney realized the amount of the cheque and gave the money to the agent, who tendered it to the landlord's attorney, who refused to accept, and the money was returned to the lessee's attorney. *Held*, in a suit for the rent, that, under the circumstances, the tender amounted to payment. *Held* further that although, as a general rule, the amount of a tender not accepted ought to be paid into Court in order to entitle the defendant to costs, yet that, as the tender in this case amounted to payment, the defendant was entitled to have the suit dismissed with costs. BOLYE CHUND SING v. MOULARD

[I. L. R., 4 Calc., 572]

TENURE.**Condition in lease for—**

See BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78).

[B. L. R., Sup. Vol., 972

10 W. R., 156

11 W. R., 201

6 N. W., 326

I. L. R., 9 Calc., 88, 808

4 C. L. R., 469

12 B. L. R., 439

created under Court of Wards.

See COURT OF WARDS.

[15 B. L. R., 343]

Forfeiture of—

See CASES UNDER LANDLORD AND TENANT
—ABANDONMENT, RELINQUISHMENT, OR
SURRENDER OF TENURE.

TENURE—continued.

See CASES UNDER LANDLORD AND TENANT
—FORFEITURE.

Relief against—

See CASES UNDER LANDLORD AND TENANT
—FORFEITURE.

Transfer of—

See BENGAL REGULATION VIII OF 1819.

[3 B. L. R., P. C., 48

I. L. R., 17 Calc., 162

See BENGAL TENANCY ACT, s. 12.

[I. L. R., 16 Calc., 642

I. L. R., 19 Calc., 17, 774

See LANDLORD AND TENANT—EJECTMENT
—NOTICE TO QUIT.

[I. L. R., 14 Mad., 98

See LANDLORD AND TENANT—FORFEITURE
—BREACH OF CONDITIONS.

[I. L. R., 17 Calc., 826

See LANDLORD AND TENANT—FORFEITURE
—TRANSFER OF TENANCY.

[I. L. R., 20 Calc., 590

See CASES UNDER LANDLORD AND TENANT
—TRANSFER BY LANDLORD.

See CASES UNDER LANDLORD AND TENANT
—TRANSFER BY TENANT.

See LEASE—CONSTRUCTION.

[I. L. R., 17 Calc., 826

See ONUS OF PROOF—LANDLORD AND
TENANT . I. L. R., 13 Mad., 60

See CASES UNDER RIGHT OF OCCUPANCY—
TRANSFER OF RIGHT.

See STAMP ACT, 1862, s. 14.

[3 B. L. R., Ap., 30

1. ———— *Grant for purpose of living on the land.*—*Per* PEACOCK, C.J.—If one man grants a tenure to another for the purpose of living upon the land, that tenure, in the absence of evidence to the contrary, is assignable. BENI MADHUB BANERJEE v. JAI KRISHNA MOOKERJEE

[7 B. L. R., 152; 12 W. R., 495

Upholding, on appeal, KEMP, J., in BANEE MADHUB BANERJEE v. JOY KISHEN MOOKERJEE

[11 W. R., 354

2. ———— *Homestead land—Transferability under the law before the Transfer of Property Act (IV of 1882)—Custom.*—Where a non-agricultural holding was transferred before the passing of the Transfer of Property Act,—*Held* that it could not be inferred that the holding was transferable from the mere fact that it was used for residential purposes, having regard to the law as it then stood. S. 108, cl. (j); of the Transfer of Property Act (IV of 1882) does not apply to transfers which took place before the Act. *Beni Madhub Banerjee v. Jai Krishna Mookerjee*, 7 B. L. R., 152, followed.

TENURE—concluded.

HARI NATH KARMAKAR & RAJ CHANDRA KARMAKAR
E C. W. N., 123

NABU MONDEL & CHOLIV MULLICK
[I. L. R., 25 Calc., 898

3. ————— Mokurari tenure—It is necessary that a tenure should be mokurari in order to be transferable. *HURONOHUN MOOKERJEE & LALUMONER DASSEE* 1 W. R., 5

4. ————— Surburakari tenure in Cuttack—Consent of zamindar—The alienation of surburakari tenure in Cuttack is not practicable without the consent of the zamindar. *DOORJODHUN DASS & CHOYA DATT* 1 W. R., 322

5. ————— Raiyatwari tenure—Consent of zamindar or talukhdar.—Quere—Whether a transfer of a raiyatwari tenure can be effected without the consent of the zamindar or talukhdar, as the case might be, the immediate successor in estate. *SHIBESUBER DEDIA & MOHNOORANATH ACHARYEE*
[13 W. R., P. O., 18; 13 Moore's I. A., 270

TERM OF YEARS

See ENGLISH LAW—PERSONALTY, LAW RELATING TO. I. L. R., 24 Calc., 218

TERRITORIAL JURISDICTION.

————— Effect of Cession on—

See CESSION OF BRITISH TERRITORY IN INDIA. I. L. R., 1 Bom., 367
[I. L. R., 31 A., 103
10 Bom., 37

TERRITORIAL LAW OF BRITISH INDIA.

————— Nature of territorial law—

TERRITORY, TRANSFER OF—

————— District of Kanara—16 & 17 Vict., c. 93, 21 & 22 Vict., c. 106—Indian Councils Act, 23 & 25 Vict., c. 67—The power given by 16 & 17 Vict., c. 93, to alter the distribution of territories among the presidencies, was vested by 21 & 22 Vict., c. 10, in the Secretary of State for India, by whose order of 25th of February 1862 North Canara was annexed the new arrangement of territory to take effect from such date as the Governor-General of India in Council should by proclamation appoint for the purposes of the Councils Act, 1861, which Act has reference

TERRITORY, TRANSFER OF—concluded.

dition and authority of the Courts of Justice, the annexation of those purposes being made by the Secretary of State, and not being qualified or controlled by the proviso in s. 47 of 24 & 25 Vict., c. 67, which cannot be construed as a substantive enactment, or as qualifying or restraining the power vested in the Secretary of State. *REG. & VYANKATSVAMI* . 2 Bom., 112; 2nd Ed., 108

TESTATOR.

See HINDU LAW—WILL.

See MAHOMEDAN LAW—WILL.

See CASES UNDER WILL.

————— Acknowledgment of signature by—

See WILL—ATTESTATION.
[I. L. R., 1 Bom., 547

————— Creditor of—

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
[I. L. R., 2 Calc., 208
I. L. R., 8 Calc., 429, 480
I. L. R., 10 Calc., 19, 413
I. L. R., 10 I. A., 80
I. L. R., 19 Calc., 48
I. L. R., 17 Mad., 373

————— Debts of Hindu—

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 4 Calc., 897

————— Power of—

See CASES UNDER HINDU LAW—WILL—
POWER OF DISPOSITION.
See MAHOMEDAN LAW—WILL.

————— Signature of—

See CASES UNDER WILL—EXECUTION.

THAKBUST AWARD

See ACT VIII OF 1843
[2 B. L. R., P. C., 111; 13 W. R., P. C., 6

THEFT.

See CATTLE TRESPASS ACT, s. 1.
[I. L. R., 23 Calc., 139

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE.
[I. L. R., 17 Bom., 399
I. L. R., 27 Calc., 680, 690

See PARTNERSHIP PROPERTY.
[13 B. L. R., 307, 303 note, 310 note

See POST OFFICE ACT, s. 49.
[I. L. R., 14 Mad., 229

See CASES UNDER STOLEN PROPERTY.

THEFT—continued.

— committed outside jurisdiction.

See CASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY.

See CASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.

— Damages for—

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, ETC.

[I. L. R., 24 Calc., 672]

— Suspicion of—

See FOREST ACT, ss. 52, 73.

[I. L. R., 15 Bom., 229]

1. ——— Penal Code, s. 378—*Definition of theft.*—As to what constitutes theft as defined in the Penal Code. *QUEEN v. MADAREE*

[3 W. R., Cr., 2]

2. ——— *Moving property and severing it.*—The moving by the same act which effects the severance may constitute a theft. *ANONYMOUS*

5 Mad., Ap., 36

3. ——— *Removal of property against wish of ostensible purchaser thereof—Apparent title or colour of right to property.*—To constitute theft, it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. *Cape v. Scott, L. R., 2 Q. B., 269*, followed. *QUEEN-EMPRESS v. GANGARAM SANTRAM*

I. L. R., 9 Bom., 135

4. ——— *Giving up right of possession in property by owner.*—A conviction for theft under the Penal Code is illegal if the owner has given up all property in and all possession of the subject of the alleged theft. *ANONYMOUS*

[4 Mad., Ap., 30]

5. ——— *Making away with property lawfully possessed.*—The making away with property of which a person has been put in lawful possession by superior authority is not theft, but criminal breach of trust. *QUEEN v. BHARUT CHUNDER*

1 W. R., Cr., 2

6. ——— *Unexplained possession of rice—Meaning of corpus delicti.*—Where a prisoner was found in possession of rice not thrashed in the usual way, and having no paddy land of his own he failed to account satisfactorily for his possession of the rice,—*Held* he could not be convicted of theft without more evidence. The meaning of the term "*corpus delicti*" explained. *ANONYMOUS*

7 Mad., Ap., 19

7. ——— *Dishonest taking, Omission of allegation of.*—The prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and

THEFT—continued.

there was no evidence of such taking. *Held* that the conviction was bad. *ANONYMOUS* 5 Mad., Ap., 37

8. ——— *Theft of joint property by co-parcener.*—Theft of joint property may be committed by a co-parcener if he takes it from joint possession and converts such possession into separate possession. *QUEEN-EMPRESS v. PONNURANGAM*

I. L. R., 10 Mad., 186

9. ——— *Abetment of theft—Receiving stolen property—Joint undivided Hindu family.*—A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years, he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family, he lived in commensality with it, but he did not treat such property as joint family property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property. *EMPRESS v. SITA RAM RAI*

I. L. R., 3 All., 181

10. ——— *Dispute as to possession of land—Bond fide belief as to title—Cutting and carrying away crops sown by another—Facts constituting theft—Dishonest intention—Code of Criminal Procedure (Act V of 1898), ss. 429 and 439.*—An accused person alleged and claimed that certain paddy was grown upon his jote, and that he cut and removed it as a matter of right and in an assertion of a *bond fide* claim to the land. It was admitted by the complainant, who also claimed the paddy and the land, that there had been a boundary dispute between his landlord and the landlord of the accused. The accused was convicted in a summary trial of the theft of the paddy. In an application for revision and to set aside the conviction,—*Held per PRINSEP, J.*, declining to interfere, that, if the complainant's bargadars had grown the crops as found and nevertheless the accused cut and carried them off, there could be no *bond fide* belief that he was entitled to do so, to justify his action in regard to the complainant. With the fact found that possession was with the complainant by the growing by him of the crops cut by the accused, the accused was without justification in thus taking the law into his hands, even if he was entitled to hold the lands, because he was not in actual possession of them. *Per STEVENS, J.*—The findings of the lower Court taken as a whole amounted to a finding that the accused acted *malá fides*, and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could not be taken as showing that a *bond fide* dispute as to title existed between the complainant and himself. To constitute theft, it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. In the present case the

THEFT—continued

raised the crops which the accused removed. The application should be dismissed. *Queen Empress v Gangaram Santram* I L R. 9 Bom., 135, referred to *Per STANLEY, J.*, contra.—That the evidence

was sown by the complainant would not give him the property in the crop, if it were sown on the land of the accused. If the land was the land of the accused, it was an act of trespass on the part of the complain-

offence of theft. No such intention has been found on the part of the accused. The conviction and sentence should be set aside. *PANDITA alias RAH MATULEA PRAMANIK v I ANIMILLA ARUNDO*

[I L R., 27 Cal., 501
4 C W N., 480]

11. — — — — — *Cutting and removal*

as they had never claimed the crop as belonging to them, they did not act in good faith believing the crop to be their own property, and were therefore guilty of the offences under ss 143 and 379. *Abdul Fazeel v Khator Montal* 3 C W N., 332 distinguished. *JAGAT CHANDRA LAL v RAHUL CHANDRA LAL* 4 C W N., 190

12. — — — — — *Malomolan marriage?*
woman—Husband and wife—Taking property of husband—A Malomolan married woman may be convicted of theft or abetment of theft in respect of the property of her husband. REG v KHATABAT

[8 Bom., Cr., 8]

13. — — — — — *Hindu woman removing strikhan from possession of her husband—A Hindu woman who removes from the possession of her husband, and without his consent, her palla or strikhan cannot be convicted of theft, nor can any person who joins her in removing it be convicted of that offence.* REG v DATTA HALVAN

[8 Bom., Cr., 11]

14. — — — — — *Removal by a wife of her husband's property left in her custody—There is no presumption of law that a wife and*

THEFT—continued

husband constitute one person in India for the purposes of criminal law. If the wife, removing her husband's property from his house, does so without onerous intention, she is guilty of theft. *QUEEN EMPRESS v BIRCHI* I L R., 17 Mad., 401

15. — — — — — *Removal of family jewels by wife and persons coming to commit adultery with her—Two persons were committed for trial, the first prisoner for a felony enticing away a married woman, and theft, and the second prisoner for abetment of the enticing away and theft. The first prisoner was acquitted of the charges of adultery and enticing away. The case for the prosecution was that the prosecutor's wife left her husband's house in company with the first prisoner and that previous to her departure she, by means of false keys supplied to her by the second prisoner, opened the room where the family jewels and money were kept and removed them. The jewels were deposited with the second prisoner for safe custody. Part of the money was handed to the first prisoner. Held that notwithstanding the acquittal the prisoners were not entitled to be discharged without trial on the charge of theft.* *ASOYTHOVS* 5 Mad., Ap., 23

16. — — — — — *and s. 114—Forceful carrying off crop—Want of consent of owner—Where a Court finds that parties came with a number of armed men and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner. Even if they took no part in the actual taking they must with reference to s. 114 Penal Code, be considered guilty of the substantive offence under s. 378.* *QUEEN EMPRESS v CHANDER MURDAS* 6 W R., Cr., 59

17. — — — — — *Removal of crop under attachment—Disonest intention—Madras Rent Recovery Act, s. 5 Notice of distraint—Certain crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who re thereupon charged with theft. The accused were not the defendants, the demand having been made upon certain other persons in whose names the pottahs stood as the registered proprietors. The accused were acquitted. Held that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint and dishonestly removed the crops with such knowledge on the ground that under s. 8 of the Madras Rent Recovery Act they were entitled to notice of the distraint which had not been served on them.* *QUEEN EMPRESS v RAMASAMI* [I L R., 10 Mad., 304]

18. — — — — — *Person acting under ill founded claim of right—A person acting under a claim of right (howsoever ill founded such claim may be) is not guilty of theft by asserting it.* *QUEEN v RAM CHAND SINGH* 7 W R., Cr., 57

19. — — — — — *Removing a thing with the object of causing trouble to the owner—Wrongful loss—The accused who was charged by his master with having committed theft of a box, stated that he had removed the box and left it concealed in the cowshed to give a lesson to his master.*

THEFT—continued.

The Sessions Judge in his charge to the jury said: "If the jury find that the accused removed the box to put the owner to trouble, that is causing wrongful loss to the owner, and the act is theft;" and the jury returned a verdict of guilty, finding "that the taking was with the intention of putting the owner to trouble." *Held* the above charge and verdict were based on an erroneous view of the law. It cannot be said that removing a thing to put the owner to trouble is necessarily and in every case causing "wrongful loss." **NABI BAKSH v. QUEEN-EMPRESS**

[I. L. R., 25 Calc., 416
2 C. W. N., 347

20. Dishonest intention—Wrongful gain—Wrongful loss.

—A charge of theft will lie under s. 378 of the Penal Code (Act XLV of 1860) even where there is no intention to assume entire dominion over the property taken, or to retain it permanently. When a person takes another man's property, believing under a mistake of fact and in ignorance of law that he has a right to take it, he is not guilty of theft, because there is no dishonest intention, even though he may cause wrongful loss within the meaning of the Penal Code. The accused was the brother of a farmer or contractor of a public ferry on the Tadri river. He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in seizing the boat. *Held* that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession. **QUEEN-EMPRESS v. NAGAPPA**

[I. L. R., 15 Bom., 344

21. Absence of dishonest intent—Cutting paddy under claim of right.

—The accused cut and removed paddy from certain land alleging that the land and paddy belonged to his uncle. He cited witnesses in support of his story, and also produced a deed of compromise in support of title. The Magistrate disbelieved the defence witnesses, and found that the land and paddy belonged to the complainant, and that the deed related to other land, but there was nothing in his judgment to show that the petitioner did not *bona fide* believe that the paddy belonged to his uncle. *Held* that the findings did not support the conviction for theft. To constitute the offence, it was necessary that the taking away of the paddy should have been done dishonestly, i.e., with the knowledge that it belonged to the complainant and not to his uncle. **ABDOOL BISWAS v. KHATER MONDAL**

3 C. W. N., 332

22. and s. 143—

Unlawful assembly and theft—Property in crop grown on another's land on contract to pay latter a certain sum for the crop when grown—Removal of such crop by owner of land.—An indigo planter agreed with some cultivators that the former would

THEFT—continued.

grow rice on their land at his own expense and take the whole crop paying them Rs 16 for each bigha. The owners of the land cut and carried away the crop so grown. *Held* that on the agreement the crop remained the property of the owners of the land which the factory merely agreed to purchase, and that a removal of the crop did not constitute theft, but merely a breach of contract remediable in damages. As the acts did not amount to theft, which was said to be the common object of the accused, conviction for being members of an unlawful assembly could not stand. **PARMESH WAR SINGH v. EMPRESS**

[4 C. W. N., 345

23. Removal of

debtor's property by the creditor—Penal Code as drafted in 1837, s. 363.—With a view to coerce the complainant to pay a sum of Rs 14, which he owed to the accused, three head of cattle worth Rs 60 were removed from the complainant's homestead under the order of the accused. *Held* the offence of theft was not committed by the accused. The illustrations to s. 378 of the Penal Code indicate that it was the intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with intention of keeping it himself, or disposing of it for his own benefit or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. The words "intending to take dishonestly any moveable property" in the above section, read with s. 23 and s. 24 of the Penal Code, mean "with the intention of gaining by unlawful means property to which he is not legally entitled." "To gain property by unlawful means" means "to gain the thing moved for the use of the gainer," and not "the gaining possession of it for a time for a temporary purpose." S. 363 of the Penal Code as drafted in 1837 discussed. **PROSONNO KUMAR PATRA v. UDOY SANT**

I. L. R., 22 Calc., 669

24. Removal of

debtor's property by creditor to enforce payment of debt—Wrongful gain—Wrongful loss.—A creditor, by taking any moveable property of his debtor from the debtor's possession or without his consent, with the intention of coercing him to pay his debt, commits the offence of theft as defined in s. 378 of the Penal Code. Ss. 23 and 24 of the Penal Code discussed and explained. **PROSONNO KUMAR PATRA v. UDOY SANT**, I. L. R., 22 Calc., 669, overruled. **QUEEN-EMPRESS v. SRI CHURN CHUNGO**

[I. L. R., 22 Calc., 1017

25. Removal by

creditor of his debtor's property with a view to obtaining payment of his debt.—*Held* that the removal by a creditor against the will of his debtor of property belonging to such debtor, with the view of compelling such debtor to discharge his debt, amounts to theft within the meaning of s. 379 of the Penal Code. **QUEEN-EMPRESS v. SURMESHAH BAI**, Weekly Notes, All. (1888), p. 97, referred to. **PROSONNO KUMAR PATRA v. UDOY SANT**, I. L. R., 22 Calc., 669, dissented from. **QUEEN-EMPRESS v. AGHA MUHAMMAD YUSUF**

I. L. R., 18 All., 88

THEFT—continued

26. — *Assertion of right by accused—Defence to charge of theft*—A bare assertion by an accused charged with committing theft of a proprietary right in the alleged stolen property is no reason for a Magistrate to refuse to entertain a charge of theft. *QUEEN v. KALICHARAN MISHRA* 7 B L R., Ap., 55

S. C. HUNOO SINGH v. KALI CHURN MISHRA
[16 W. R., Cr., 18]

See KHETTER NATH DUTT v. INDRO JALIA
[16 W. R., Cr., 78]

HURIS CHUNDRA DAS v. BOLAI AUDHIGARER
[16 W. R., Cr., 75]

27. — *Plunder of crops—Assertion of right to crops*—The mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops. The claim to the property must be proved by evidence to be fair and good. *NASSIM CHOWDHRY v. NAKHOO CHOWDHRY* 15 W. R., Cr., 47

28. — and s. 442—*Boat—Moveable property*—A boat may be the subject of theft. Although, under s. 442 of the Penal Code, it is not a moveable property, it is a chattel.

29. — *Intention to convert to his own use, Want of—Temporary use*—When an accused charged with murder was alleged to have taken a boat from a place where it had been secured by its owner, and after proceeding some distance in it had abandoned it and when he was charged with the theft of the boat,—Held that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make it permanently his own property, but merely to make use of it for the purpose of aiding him in escaping. *ABU SHIKHAR v. QUEEN EMPRESS*

[I. L. R., 11 Calc., 635]

30. — *Property removed*—*Intention to convert to his own use*—*Carrying out his object*—*For theft*—Held that, as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed. *EXPRESS v. TROTHKONATH CHOWDHRY*

[I. L. R., 4 Calc., 368; 3 C. L. R., 525]

31. — *Possession of wood by forest inspector—Removal of wood without consent of forest officer*—Possession of wood by a forest officer.

THEFT—continued

32. — *Moveable property*—*A dog up and immediately carried away without any authority or right*—Several cart-loads of earth, part of unassessed lands of a village. Held that it was not guilty of theft. *QUEEN EMPRESS v. KOTAYIA* [I. L. R., 10 Mad., 255]

33. — *Earth—Moveable property*—*Earth, that is, soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft*—Whoever dishonestly severs such earth from the earth commits theft. Where a person dishonestly carried away 100 cart loads of earth from the complainant's land,—Held that he was guilty of theft. *Queen Empress v. Kotayya*, I. L. R., 10 Mad., 255, dissented from. *QUEEN EMPRESS v. NIVRAM* [I. L. R., 15 Bom., 702]

34. — and s. 95—*Valueless produce—Property almost valueless*—Conviction and sentence by a Magistrate reversed, as the act of which the accused was convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s. 95 of the Penal Code, and did not therefore amount to theft. *REG v. KASTA BIV RAYJI* [5 Bom., Cr., 35]

35. — *Retaining possession of nets of poachers*—The prisoner, acting bona fide in the interests of his employers and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers. Held that the prisoner was not guilty of theft. *QUEEN v. NOBIN CHUNDER HOLLAR* [16 W. R., Cr., 79]

36. — *Taking fish in navigable river*—The taking fish in that portion of a navigable river over which a right of julkar exists in another person does not fall within s. 378 of the Penal Code. *HERRI MORI MOUNDOCK v. DEVONATH MAZO* [19 W. R., Cr., 47]

BRUSHY PARUI v. DEVONATH BAKHARER
[20 W. R., Cr., 15]

37. — *Taking fish from creek*—The wrongful taking of fish from a creek is not theft. *QUEEN v. RAYU POTHADU* [I. L. R., 5 Mad., 390]

38. — and s. 447—*Fishing in tank connected with a running stream—Criminal trespass*—Accused were charged with having taken fish from a tank belonging to the complainant, and convicted of theft and criminal trespass under ss. 379 and 417 of the Penal Code. It was found that the tank in question was not enclosed on all sides, and was dependent on the overflow of a running channel which was connected with the tank. Held that the fish were *ferre nature* and when the floods were in, and the fish could leave it at pleasure. Held that the fish were *ferre nature* and

THEFT—continued.

not in "the possession of" the complainant, and consequently no offence had been committed. *Held* further that, had the fish been taken at a time when they were restrained of their natural liberty, and were liable to be taken at the pleasure of the owner of the tank, the conviction would have been upheld. *In the matter of the petition of Madhab Hari, I. L. R., 15 Calc., 390, distinguished. MAYA RAM SURMA v. NICHALA KATANI*

[I. L. R., 15 Calc., 402]

39. ————— and ss. 143, 404, 426, and 447—*Infringement of exclusive right of fishery in public river—Criminal misappropriation—Mischief—Criminal trespass—Unlawful assembly.*—Fish in a public river cannot be said to be property in the possession of the person who may have the fishery right, and the infringement of that right is not theft under s. 378 of the Indian Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Government to the complainant, and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed. *BHAGIRAM DOME v. ABAR DOME*

[I. L. R., 15 Calc., 388]

IN THE MATTER OF THE PETITION OF MADHAB HARI . . . I. L. R., 15 Calc., 390 note

Contra, MODHOO MUNDLE v. UMESH PARNI

[I. L. R., 15 Calc., 392 note]

40. ————— s. 379—*Possession—Fish in an enclosed tank.*—Where the accused were found fishing without permission in an enclosed tank belonging to the Municipality of the town of Sirsi, it was held that they could be convicted of theft, as the tank from which the fish were taken was apparently an enclosed tank, and the fish were therefore restrained of their natural liberty, and liable to be taken at any time according to the pleasure of the owner, and were therefore subjects of theft. *Bhursun Parui v. Denonath Banerjee, 20 W. R., Cr., 15, and Queen v. Revu Pothadu, I. L. R., 5 Mad., 390, distinguished. QUEEN-EMPRESS v. ADAM VALAD SHAIK FARID . I. L. R., 10 Bom., 193*

41. ————— and ss. 206, 403, 424—*Harvesting crops under attachment.*—A judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force, and was convicted of theft. *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under Penal Code, s. 424. *Per BENSON, J.*—The offence was also criminal misappropriation within the meaning of Indian Penal Code, s. 403. *QUEEN-EMPRESS v. OBAYYA*

[I. L. R., 22 Mad., 151]

42. ————— and ss. 403, 425—*Criminal misappropriation—Mischief—Taking bull set at large at Sradha festival in accordance with Hindu religious usage—Res*

THEFT—continued.

nullius—Property in Brahmini bull.—A bull dedicated and set at large at the Sradha of a Hindu in accordance with religious usage is, not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. *Queen-Emress v. Bandhu, I. L. R., 8 All., 51, followed. Queen-Emress v. Nulla, I. L. R., 11 Mad., 145, referred to and commented on. ROMESH CHUNDER SANNYAL v. HIRU MONDAL . . . I. L. R., 17 Calc., 852*

43. ————— *Illegal seizure and impounding of cattle.*—The illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience, and annoyance. *ARADHUN MUNDUL v. MYAN KHAN TAKADGEE . 24 W. R., Cr., 7*

44. ————— *Removal of salt naturally formed—Bombay Salt Acts (XXVII of 1837 and XXXI of 1850).*—Dishonest removal of salt naturally formed in a creek which was under the supervision of an officer belonging to the Customs Department constitutes theft, the salt having been legally appropriated by such officer. *Per BAYLEY, and WEST, JJ.*—But removal for one's own use from a creek of such salt not legally appropriated constitutes no offence under the Penal Code or the Salt Acts, though the salt becomes liable to detention. *REG. v. MANSANG BHAVSANG . 10 Bom., 74*

45. ————— *Taking salt from swamp surrounded by police—Possession.*—A swamp, the property of Government, having been surrounded with police guards by Government to prevent salt being removed, *Held* that the taking against the will of Government, and with the intention of obtaining an unlawful gain, of salt which had been spontaneously produced on the swamp was theft. *QUEEN v. TAMMA GHANTAYA*

[I. L. R., 4 Mad., 238]

46. ————— and s. 204—*Secreting document produced before arbitrator—Intention—Remoteness of object.*—Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it, *Held* that the offence committed was not theft, but secreting a document under s. 201 of the Penal Code. *SUBRAMANIA GHANAPATI v. QUEEN*

[I. L. R., 3 Mad., 261]

47. ————— s. 380—*Theft in a building—Requisites for offence.*—All that is necessary in

THEFT—concluded

order to constitute the offence of theft in a building is that the property should be under the protection of the building: it is not necessary to allow unlawful entrance into the building. **QUEEN v. ISHERN PERSHAD** 21 W. R., Cr., 40

48 ——— and s 409—
Constables taking property from house under their charge—Theft by constables of property from the house they were employed to guard is punishable under s 30 and not s 40, Penal Code. **QUEEN v. BORNATH SINGH** 3 W. R., Cr., 29

49 ——— s 381—*Theft by servant*
Hired boatman—A hired boatman does not come within the definition of a clerk or servant under s 31 of the Penal Code. Theft by such a person on board a boat comes under s 380. **QUEEN v. HAWOOL MANJEE** 2 W. R., Cr., 32

50 ——— ss 381, 409—*Stealing money in accused's charge*—Criminal breach of trust—The prisoners were charged with having stolen a sum of money shut up in a box and placed in the police treasury buildings over which they as burkundazs, were placed on guard. Held that the charge should have been made under s 381 of the Penal Code (theft by servant in possession of property), and not under s 409 (criminal breach of trust by public servant). **QUEEN v. JUDIGNATH SINGH** [3 W. R., Cr., 55]

51 ——— s 401—*Belonging to a gang of persons associated for the purpose of habitually committing theft*—Evidence of bad character—Evidence Act (I of 1872) s 14 and s 64 as amended by Act III of 1891—The character of the accused is not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft, punishable under s 401 of the Indian Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence. Where it was proved that certain persons were found together at some distance from their houses that they were all intimately connected with one another and were in the habit of visiting each other, that one of them was arrested in the act of picking a pocket and that when they were arrested many of them gave false names and false addresses—Held they could not be convicted under s 401 of the Penal Code there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft. **MAHENDRA PARI v. QUEEN** [I. L. R., 27 Cal., 139]

DWARKA BUNIA v. EMPRESS 4 C. W. N., 97

THEKADAR,

1 ——— *Meaning of term*—The term "thekadār" is properly applicable to hereditary cultivators only when they have also a theka or lease of a share in or the whole of the profits of an estate. **HAIR NATH v. MURDAR** 2 N. W., 411

THEKADAR—concluded

2 ——— *Mode of creation of thekadār's interest*—Effect of accepting theka—A thekadār is ordinarily a person who holds a theka or lease of the whole of a zamindār's interest in a village. There is nothing in the law which renders a writing necessary to the creation of such an interest. It is not to be inferred from the mere circumstance that persons accepted a theka that they forewent their existing right. **LEELA DHUN v. BHOOGHUNT** 11 N. W., 39

THUMB IMPRESSIONS

See EVIDENCE—CRIMINAL CASES—THUMB IMPRESSIONS 1 C. W. N., 33

TICKET

— *Refusal to produce*—

See RAILWAYS ACT 1871 s 2
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See RAILWAYS ACT, 1879 s 17 31
[I. L. R., 1 Cal., 192]

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See CASES UNDER PERSISTENCE OR OBSTRUCTION TO EXECUTION OF DECREE.

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I. L. R., 17 Bom., 631

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I. L. R., 20 Bom., 759

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9 C. L. R., 253

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[I. L. R., 1 Bom., 624

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3 N. W., 141

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[1 L. R., 1 Mad., 65

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[4 Bom., A. C., 111

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1 EVIDENCE AND PROOF OF TITLE

(a) GENERALLY

1 Evidence of title—Oral evi-

to landed property, the High Court of Appeal reversed his decision, and held that oral evidence, if believed, may be as good for proving a man's title as documentary evidence. *DURAN PATEER v. KORIY. CHANDRA NAYAN*

[1 B. L. R., 8, N., 16; 10 W. R., 217

Documentary evidence in India—The presumption in favour of the genuineness of documents offered in evidence in India is very weak, but it must not be held that the presumption is in favour of forgery, and when a long series of documents is produced showing a reasonable origin of title nearly a century ago, a regular deduction of that title and a possess on consistent with it, confirmed by the fact of such possession existing at the time of the commencement of the respondents' title by purchase in 1833 the evidence of extrinsic improbability should be very strong indeed to counterbalance the weight of such testimony. *WILL v. BHOGEND MOYEE DEBIA*

[3 W. R. P. C., 6; 10 Moore's I. A., 165

3 Pottah granted by Collector—A pottah of land in Calcutta granted by

TITLE—continued.

1. EVIDENCE AND PROOF OF TITLE—continued

4. Forged documents

VALONI KRISHNAN GOPALAN v. CHINNA NAYANA CHETTI 15 Moore's I. A., 151

5 Suit for possession—In a suit to recover possession of land which both the plaintiff and defendant claimed to have reclaimed from jungle and to have possessed many years and for which each claimed to have obtained a pottah from Government, the mere fact that the land was included in plaintiff's pottah was held to be insufficient, without going into the facts to ascertain possession, to entitle him to a decree. *GOLAM REZA CHOWDHURY v. CHANDOO MEAH LUSKUR*

[15 W. R., 45

6 Possession—Presumption—The ordinary presumption that possession goes with the title would be of no avail in the presence of clear evidence to the contrary, but where there is strong evidence of possession on one side opposed by evidence apparently strong also on the

possession. *RUNJEET RAM PANDAY v. GOBSEDHUN RAM PANDAY* 20 W. R., P. C., 25

7 Possession—Limitation Act (XV of 1877) arts 143, 144—Conflicting evidence of possession—Presumption of title—Where two adverse parties are each trying to make out a possession of twelve years, and the evidences is conflicting and not conclusive on either side,—Held that the presumption that possession goes with the title must prevail. *DHARM SINGH v. HERN PERSHAD SINGH* I. L. R., 13 Calc., 38

8. It is only when the evidence of possession is strong on both sides and apparently equally balanced that the presumption that possession goes with title should prevail. The principle does not apply when the evidence of possession is equally unworthy of reliance on both sides. *Dharm Singh v. Herpersad Singh*, I. L. R., 12 Calc., 38, explained. *THAKUR SINGH v. BHOGEND SINGH* I. L. R., 27 Calc., 25

9 Possession. Presumption of—Waste lands—In disputes as to the right to the possession of jungle lands, it is only in cases where neither party has exercised any

TITLE—continued.**1. EVIDENCE AND PROOF OF TITLE**
—continued.

acts of ownership over the lands in question that the Court may resort to evidence of title, and presume that the party proved to have the title has also possession. **RAM BANDHU v. KUSU BHATTU**

[5 C. L. R., 481]

10. ———— Suit for possession—Possession of title-deeds and receipts for rent.—In a case involving the alternative question of fact whether certain land belonged to *R* or *C*, neither the one nor the other of the opposite party venturing to state who his opponent was, and the testimony of the witnesses on this point being doubtful, —*Held* that *R*, who was in possession of the title-deeds and of the receipts of rent, ought to succeed, unless there was something on the record to countervail such strong evidence. **KODA BUKSH KHAN v. CHOA**

[19 W. R., 162]

11. ———— Suit for declaration of title—Onus probandi—Production of title-deeds.—The plaintiff sued for declaration of her title to property of which the defendant was in possession, but of which she produced the title-deeds in favour of herself. *Held* the onus was on the defendant to disprove the plaintiff's title, and the defendant was not allowed to raise certain fresh issues; but the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. **SWARNAMAYI RAUR v. SRINIBASH KOYAL**

6 B. L. R., 144

12. ———— Possession—Uninterrupted and undisputed possession.—Uninterrupted and undisputed possession for a long time constitutes sufficient *prima facie* evidence of title; but if this possession is admitted to be under an adoption, it will avail nothing if the adoption fails. **HAIMUNCHULL SINGH v. GUNSHEAM SINGH**

[5 W. R., P. C., 69]

13. ———— Suit for possession.—Where, in a suit to recover possession of land, the plaintiff succeeded in proving that he had been in possession up to a recent date, and that he had been forcibly dispossessed by the defendant, the lower Appellate Court threw upon the defendant the burden of proving his title, and, on his failing to do so, decreed the case. *Held* that this was a fair inference of title and of a right to be replaced in possession without going further into the title, that is, to the mode of its acquisition. **TRILOCHUN GHOSE v. KAILAS NATH SIDHANTO BHOWMIK BHUTTACHARJI**

3 B. L. R., A. C., 298: 12 W. R., 175

14. ———— Proof of title—Suit for possession.—In a suit to recover possession on the allegation that plaintiff had been illegally ousted, though holding under a lease from defendant, the latter urged that, though plaintiff had been allowed to hold the tenure as a *tehsildar* or collector of rents, he had never been the *ijaradar* or farmer in possession. The Judge found that the estate was really let out in *ijara* to the plaintiffs by the defendant, who had recovered rents and granted him receipts on account of the *ijara mehal*. *Held* that this

TITLE—continued.**1. EVIDENCE AND PROOF OF TITLE**
—continued.

was a complete finding in favour of the plaintiff's title, and that it was not necessary for him to sue for the pottah which had been wrongfully denied him by defendant. **JOHEEROODDEEN MAHOMED v. DABER PERSHAD SINGH**

13 W. R., 21

15. ———— Proof of title—Evidence of possession.—In a suit to establish title, evidence of plaintiff's possession prior to the summary award under s. 15, Act XIV of 1859, under which he was dispossessed, may be good evidence of his title, and must be considered. **BULLUBEE KANT BHUTTACHARJEE v. DOORJO DHUN SHIKDAR**

[7 W. R., 39]

16. ———— Possession—Evidence Act, s. 110—Specific Relief Act, 1877, s. 9.—In a suit for possession, where the plaintiff proved that he had been in possession of the lands in dispute, and that he had been ousted by the defendants who were unable to give any proof of their right so to oust him, or of a superior title, —*Held* (PRINSEP, J., dissentiente) that the prior possession of the plaintiff was *prima facie* evidence of title, and that he was entitled to a decree. *Per* PRINSEP, J.—Proof of prior possession and of illegal dispossession are in themselves no evidence of title, except in a possessory suit under the Specific Relief Act (I of 1877). S. 110 of the Evidence Act applies only to actual and present possession, and does not declare generally that possession shall always be *prima facie* evidence of title. **KAWA MANJI v. KHOWAZ NUSSEO**

[5 C. L. R., 278]

17. ———— Possession—Lands attached by Government as being disputed lands.—Disputes respecting the boundaries of the zamindaris of Yettiapooram and Ramnad in the district of Madura having led to acts of violence by the raiyats, the Government, in the year 1836, to preserve the public peace, attached the disputed lands and took possession for the benefit of the party to whom the lands should be judicially awarded. At and before the time of the Government taking such possession, the zamindar of Yettiapooram was in possession of certain lands adjacent to, and taken as a part of, the lands in dispute. The lands remained under attachment by Government for a period of nearly twenty years, no steps having been taken regarding them till the year 1855, when the zamindar of Yettiapooram brought a suit against the Collector of Madura and the zamindar of Ramnad to recover possession of the land so formerly occupied by him, and for the mesne profits thereof while in the possession of the Government. Although no clear title in this suit was proved by either zamindar, it was held by the Courts in India, and affirmed on appeal by the Judicial Committee, that the fact of possession of the lands by the zamindar of Yettiapooram before and at the time of the attachment by Government was, under the circumstances, evidence of title, and the Government was ordered to restore the lands to him. **ZAMINDAR OF RAMNAD v. ZAMINDAR OF YETTIAPOORAM**

10 Moore's I. A., 47

TITLE—continued.**1. EVIDENCE AND PROOF OF TITLE**
—continued.

them was made to the High Court under s. 55. The one purchaser then sued the other, claiming a decree declaratory of this title, under conveyances made to him in 1890 by a Mahomedan widow, since deceased, and by assignees and lessees from her of parts of her interest in the property. He alleged that a hiba-bil-ewaz, executed by her in 1858 to her son-in-law for no substantial consideration, was nothing more than a benami transfer, after which she had remained the owner with her former title. On that hiba, however, the defence was founded, the defendant averring that it was a real conveyance by the widow, and that through the son-in-law, from whose sons the defendant had purchased the property, the latter had obtained a good title. No actual possession was established by either of the parties. The property had been let in parcels to different tenants. Among other things disputed, it was the subject of conflicting evidence whether leases had been made in the past by the then real owner, or upon assumption of title by the adverse party. The Courts below differed in their conclusion as to which of the parties was entitled to a decree. The Judicial Committee maintained the decision of the Original Court in favour of the plaintiff. **NIRMAL CHUNDER BANERJEE v. MAHOMED SIDDIK** **I. L. R., 26 Calc., 11**
[**L. R., 25 I. A., 225**

28. ————— *Survey map—Suit for possession—Ejectment—Evidence of possession and title.*—In a suit for possession of certain land as appertaining to a certain estate and for ejectment of the defendant, brought by a purchaser at a revenue-sale, the only evidence adduced by the plaintiff was two survey maps of the years 1846-47 and 1865-66. The lower Court gave the plaintiff a decree for only a portion of the land claimed, such portion being included in both of the maps. The remainder of the land claimed was not included in the map of 1846-47. *Held* that a survey map is evidence of possession at a particular time, viz., the time at which the survey was made, and may be evidence of title, but as to whether it is sufficient evidence or not, is a question to be decided in each particular case. *Held* further that, as the two maps showed that the portion of the land decreed to the plaintiff was in his predecessor's possession at the date of both surveys—that is to say, at two periods with an interval of nearly twenty years between them—they might be sufficient evidence of title, and the decree of the lower Court was correct. **Mohesh Chundra Sen v. Juggut Chundra Sen, I. L. R., 5 Calc., 212**, discussed. **SYAM LAL SAHU v. LUCHMAN CHOWDREY** . . . **I. L. R., 15 Calc., 353**

29. ————— *Transfer of property—Surrender of dar-mokurari lease—Formal deed unnecessary.*—Where a mokurari granted a dar-mokurari lease of part of his holding which was afterwards surrendered for good consideration, ikrar-namas to this effect were executed, but, not being registered, were not receiveable in evidence. *Held* that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had be-

TITLE—continued.**1. EVIDENCE AND PROOF OF TITLE**
—continued.

come of the dar-mokurari interest. **IMAMBUNDI BEGUM v. KAMLESWARI PERSHAD**

[**I. L. R., 14 Calc., 109**
L. R., 13 I. A., 160

30. ————— *Hypothecation—Decree for enforcement of lien—Objection to attachment and sale raised by person not a party to decree—Release of property from attachment—Suit by decree-holder for declaration of right based on decree—Defence based on sale-deed found to be fraudulent—Plaintiff entitled to succeed on basis of his decree without further proof of title.*—An objection to the attachment and sale of a house which was advertised for sale in execution of a decree for enforcement of lien was allowed, upon the ground that the objector had purchased the house from the mortgagor, and his purchase was not subject to the decree, to which he was not a party. The decree-holder then brought a suit against the objector, claiming a declaration of his right to recover the amount due under his decree by enforcement of lien against the house, and that the order releasing the property from attachment should be set aside. The Courts below, holding that the deed of sale set up by the defendant was fraudulent and collusive, decreed the claim. *Held* that, although the defendant was not a party to the decree obtained against the mortgagor, yet, as the basis of his title to claim the property had been found to be a mere nullity, the plaintiff was entitled to succeed on the basis of the decree, which stood unimpeached, without being put to proof of the mortgage deed as against the defendant. **KADIR BAKSH v. SALIG RAM** **I. L. R., 9 All., 474**

31. ————— *Commission of partition.*—Under a commission of partition issued by the Supreme Court, land in Calcutta was apportioned among the members of a family, and the allotments were confirmed by final decree in 1825. In this suit, brought in 1884, the plaintiff claimed, through one of the family, a parcel of land, by reference to one of the allotments so made. The defence, which was made by setting up a title through the widow of him who received the allotment, was not proved; but the correctness of the area allotted was also in dispute, and the Appellate Court excluded part from the decree, made by the first Court for the whole. It appeared to the Judicial Committee that there was no ground for assuming that the members of the family, who were parties to the partition suit, were under any mistake as to the family-property, or that there was any error, or want of due care, on the part of the commissioners of partition, whose proceedings had been regular; nor had there been any adverse claim to any part of the allotted land. The first Court's decree was restored. **SARODA PROSUNNO PAL v. SHAM LAL PAL** **I. L. R., 19 Calc., 618**
[**L. R., 19 I. A., 75**

32. ————— *Mirasi title—Payment of rent—Presumption.*—Continuous payment of rent for about a hundred years held to give

TITLE—continued.

1. EVIDENCE AND PROOF OF TITLE

—continued

rise to a presumption that the tenant held under a mirasi title **BRAJNATH KUNDU CHOWDERY v. LAKSHI NARAYAN ADDI** . . . 7 B L R, 211

33. — *Title confirmed by decree*—Where a proprietary title is affirmed by a decree, the property is not subsequently held under the decree alone, but under the original title **AMRIT KOER v. ROOP KOER** [2 N. W., 459: Agra, F. B., Ed. 1874, 240]

(b) LONG POSSESSION

34. — *Title by long possession—Adverse possession—Limitation*—Twelve years' continuous possession of land by a wrong doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong doer. *Semble*—Such title may be transferred to a third person whilst it is in course of acquisition, and before it has been perfected by possession **GOSSAIN DASS CHUNDER v. ISSUR CHUNDER NATH** . . . I L R, 3 Cal., 224

See **GOLUCK CHUNDER MARANTA v. NUNDO COOMAR ROY** [I L R, 4 Cal., 699; 3 C. L R, 450]

35. — *Title by long possession—Adverse possession—Limitation—Grant made by wife during absence of husband*—A wife, during the prolonged absence of her husband, who was erroneously supposed to be dead, acting in excess of the limited powers of a wife in possession of her absent husband's property, made a mirasi grant of a portion of her husband's estate. The grantee entered into and remained in possession for upwards of twelve years. *Held* that the position of the grantee was not that of a lessee, and that his possession (although in its inception an act of trespass against the husband), having continued for upwards of twelve years, had perfected his title to the lands. One who holds possession on behalf of another does not, by mere denial of that other's title, make his possession adverse, so as to give himself the benefit of the statute of limitation **BEJOT CHUNDER HAYEJEE v. KALLY PROSOVNO MOOKERJEE** . . . I L R, 4 Cal., 327

36. — *Declaration of title—Adverse possession—Variation between pleading and proof*—A declaration of title may be made upon proof of twelve years' adverse possession. Such declaration cannot, however, be given on a title not distinctly stated in the plaint or in the issues. **SHIBU KUMARI DEBI v. GOVIND SHAW TANTI** . . . I L R, 3 Cal., 418

37. — *Suit for declaration of title—Failure to prove stated title—Title by long possession*—In a suit for a declaration of title to a share of landed estate, although the plaintiffs fail to satisfy the Court that their title to the land has been acquired in the way they state, yet if it is admitted that they have been in possession for more than twelve years the effect of such possession

TITLE—continued.

1 EVIDENCE AND PROOF OF TITLE

—continued.

It to extinguish other titles, if these existed, and the plaintiffs ought to have the declaration sought. **RAM LOCHUN CHUCKERBUTTY v. RAM SOONDER CHUCKERBUTTY** . . . 20 W. R, 104

JUGGUT CHUNDER v. BANER MADHUB BANERJEE [23 W. R, 205]

38. — *Proof of title—Possession for period of limitation—Plaintiff,*

that where a man seeks a declaration of a title other than the possession which he has, mere possession for the period of the statute will not justify the declaration, which, allowing it to be made ought to be based upon a finding of the title alleged by plaintiff, and not upon the existence of a possession for the period required by the statute to bar the action of another. Accordingly, the lower Appellate Court was required to return a finding on the issue "whether the title asserted by plaintiff is proved." **TINU MALASAMI REDDI v. RAMA SAMI REDDI** [8 Mad., 420]

39. — *Presumption arising from possession—Issue as to identity of land re-formed on a site formerly submerged*—In a suit for the possession of a cur, formerly carried away and afterwards re-formed upon its former site, the

events they had a title by adverse possession. On an appeal the High Court considered that the latter decision was not upon the issue raised the plaintiff's claim being founded on an original title to the site of the char, a title denied by the defendants and

plaintiffs. Upon a second appeal the High Court reversed the decree of the Appellate Court and dismissed the suit, on the ground that there was an entire absence of evidence as to which party was entitled at the date to which the dispute related. *Held* that this was erroneous. On a question of parcel or no parcel, when possession has been established for a period, there is not an entire absence of evidence of anterior ownership, because *presumptio retro* **ANANDAWANTARI CHOWDERANI v. TELPURA SEWDARI CHOWDERANI** [I L R, 14 Cpl. 740; I L R, 14 I. A., 101]

40. — *Mokurari—Mokurari—Evidence of—Presumption of permanent tenure*—A person claimed to hold a mokurari

TITLE—continued.**1. EVIDENCE AND PROOF OF TITLE**
—continued.

maurasi title to certain land which was acquired under the Land Acquisition Act, but could produce no pottah or evidence of title, other than certain rent receipts, which showed that he or his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipt. *Held* that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy at will; and that this presumption was strengthened by the fact that his superior landlord, the lakhirajdar, had made no attempt to eject him or his predecessors in title during this long period. **DUNNE v. NOBO KRISHNA MOOKERJEE**. I. L. R., 17 Calc., 144

41. ————— *Suit to oust shebait from office—Tenure of office for a period greater than that provided by law of limitation.*—The plaintiff, as shebait of a certain Hindu endowment, instituted a suit to set aside certain leases and alienations created by one who had formerly been shebait, but who, it was alleged, had relinquished and abandoned the office on the ground that such leases and alienations were void and not binding on the endowment, and he sought to obtain khas possession of the lands occupied by the defendants under such leases and alienations. Although it was admitted that the plaintiff had held possession as shebait, and managed the properties connected with the endowment for more than ten years, on the nomination of the Hindu residents of the locality, the defendants put the plaintiff to proof of his title as shebait. The lower Courts found that the plaintiff had failed to prove his title, and, holding that on this ground he had no *locus standi*, dismissed the suit. *Held* that, as a suit to oust the plaintiff from his office would have been barred by limitation, by reason of his having held the office for a period exceeding that provided by the law of limitation, he had acquired a complete title for the purposes of any litigation connected with the affairs of the endowment, and that the suit had been wrongly dismissed on the ground that the plaintiff had failed to prove his title. **JAGAN NATH DAS v. BIRBHADRA DAS**

[I. L. R., 19 Calc., 776]

42. ————— *Presumption of title—Onus of proof—Madras Forest Act (Mad. Act V of 1882), s. 6.*—Certain land was notified under the Madras Forest Act, 1882, to be constituted a reserved forest. A person, alleging that the jenn title had been in his family for six or seven centuries, claimed to be the owner of the land. His claim was contested by Government on the allegation that the land had belonged to another family and had been escheated. The claimant admitted that he had not been in possession for six years before the date of the notification, Government having objected to his interfering with the land. It was found that his family had been in possession for the previous sixty years at least, and that the alleged escheat was not proved. *Held* that the claim should be allowed.

TITLE—continued.**1. EVIDENCE AND PROOF OF TITLE**
—concluded.

Observations on the burden of proof and on the presumption of title arising out of possession. **SECRETARY OF STATE FOR INDIA v. BAYOTTI HAJI**

[I. L. R., 15 Mad., 315]

43. ————— *Proof of title—Suit for declaration of title—Adverse possession—Case made in plaint.*—Where a specific title has been alleged, but not proved, and the plaintiff endeavours to succeed in the first Court or second Court of appeal upon a title by twelve years' adverse possession, he must be prepared to show that this other title by twelve years' adverse possession was raised in the Court of first instance with sufficient clearness to enable his adversary to understand that he claimed to succeed as well by twelve years' adverse possession as by the specific title alleged. **KRISHNA CHURN BHAISACK v. PRATAB CHUNDER SUMA**. I. L. R., 7 Calc., 560

44. ————— *Adverse possession—Unregistered deed of sale.*—On the 18th January 1876 plaintiff became purchaser at a Court's sale of the right, title, and interest of G and N in a shop, and, having been obstructed by defendant in obtaining possession of it, sued to recover it from him. The plaint was filed on the 27th January 1877. Defendant answered that he purchased it from G under a deed of sale dated 5th January 1865, and that he had been in possession since that day. The deed of sale was not admitted in evidence for want of registration, but it was found that defendant had been in possession as owner since 5th January 1865. *Held* that, although the defendant could not prove a title by purchase, it was open to him to establish his title without the aid of the deed of sale; that his possession of the premises for more than twelve years prior to the institution of the suit was adverse both to G and N, and that the claim of the plaintiff, who was assignee of their interest, was consequently barred. **Balaram Nemchand v. Appa**, 9 Bom., 121, explained. **Somu Gurrukul v. Rangammal**, 7 Mad., 18, referred to and followed. **SAMBHUBHAI KARSANDASS v. SHIVLALDASS SADASHIVDASS**

[I. L. R., 4 Bom., 89]

45. ————— *Long possession—Liability to assessment of revenue.*—A title to hold land free from assessment to revenue cannot be acquired by any length of possession revenue-free. **SECRETARY OF STATE FOR INDIA IN COUNCIL v. RAM UGRAH SINGH**. I. L. R., 7 All., 140

2. MISCELLANEOUS CASES.

46. ————— *Right to raise question of title—Boundary dispute—Suit for possession.*—In a boundary dispute the title of the plaintiff is not, except under very peculiar circumstances, open to attack; but when the plaintiff sues for possession of property in the defendant's hands, not as forming part of another estate, but claiming a right thereto under a superior title, then the defendant has a right to call the plaintiff's title in question. **RAMCHUNDER BANERJEE v. MUDDUNMOHUN TEWARRIE**

[W. R., 1864, 355]

TITLE—continued.

2 MISCELLANEOUS CASES—continued

47. — *Suit for possession of land held under superior holders*—The plaintiff sued to recover possession of certain lands said to have been included in a talukh pottah given him by the zamindars alleging that the defendants were obstructing his possession. For the defence it was averred that these lands fell within a 9 annas share which belonged to one D, and that by process of sale they became the right of other parties under whom defendants held as lessees. *Held*, that, notwithstanding the parties to this suit held under a superior landholder, plaintiff was entitled to have his title put in issue and determined. **NAGUR CHAND v DOORGA DOIS CHOWDHRY**

(11 W. R. 137

See **DINOMOVER BANERJEE v GRUTTOOLLAN KHAN** 2 W. R. 138

48. — *Onus probandi—Proof of*

... nation must Indian ...

(10 W. R. P. O. 1

49. — *Claim under particular title—Presumption* Where a plaintiff claims not under any general right of inheritance, but expressly under a deed he must prove that deed; no legal presumption as to the contents of the deed can arise from a consideration of what the party, through whom he claims, would have been entitled to by the law of inheritance, had there been such a deed. **MOOAD MULLICK v BELAT MULLICK**

(10 W. R. 385

50. — *Possession—*

Proof of title and possession—Suit for injunction—Hindu law—K C, a Hindu, died in March 1864, possessed among certain other property of a house, and leaving three sons, R, B, and T. He also left a will, of which he appointed R executor, and declared that "the whole of my estate, both real and personal, and the estate of my son R, are the property of the whole." R was directed to furnish the expenses of the household and carry on the shop, and pay for religious observances etc. The testator then left legacies to his daughters and others but made no mention of his sons B and T. R applied for probate of the will and an caveat was entered by B but the opposition was withdrawn on a compromise, and the will was proved; the compromise, however, was never carried out. In August 1866 R died, leaving a son, M, and his two brothers, B and T, surviving him and having made a will appointing T executor, and giving him the power of dealing with all the property. T applied for probate but was opposed by M but on 23rd Mar 1867 probate was granted. On 26th March 1867 B and T mortgaged a two-thirds share in the house to the defendant, and, on

TITLE—concluded.

2 MISCELLANEOUS CASES—concluded

default in payment of the mortgage-debt the defendant obtained a decree for payment or sale on 6th January 1868. On 17th August 1867 T mortgaged the whole house to the plaintiffs to secure payment of money borrowed to carry out A's will. The plaintiffs obtained a decree for foreclosure on 15th July

by the sale, the plaintiff prayed that the defendant

ROOPKALL KHETTER v. MONENDRA NATH ROY

(10 B. L. R. 271 note

51. — *False deed set up in support of rightful claim.*—A party is not precluded from succeeding upon a title established by a genuine deed, because he sets up a false deed which, if treated as a conveyance and not as a mere confirmation, may be inconsistent with that title. **PATTA-BHAKSHI v. VENCATAROW NAICKEN**

(7 B. L. R., P. C. 138; 15 W. R. 35

13 Moore's I. A., 560

52. — *Transfer of property—Relinquishment of dar-mokurari lease*—Necessity for conveyance—Where a dar-mokurari has been granted and then relinquished for valuable consideration to the grantor, no formal reconveyance is necessary to revert the title in the latter. **IKAMBANDI DEVIAM v. MUMTASWARI PERSHAD**

(L. R., 13 I. A., 180; I. L. R., 14 Calc., 109

TITLE DEEDS.

See **EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION**

(I. L. R., 11 Bom., 485

See **VENDEE AND PURCHASER—TITLE**

(I. L. R., 15 Bom., 657

— *Delivery of, for specific purpose*

See **ATTORNEY AND CLIENT**

(15 B. L. R., Ap., 15

— *Deposit of—*

See **CASES UNDER DEPOSIT OF TITLE-DEEDS**

See **INSOLVENCY—VOLUNTARY CONTRIBUTIONS AND OTHER ASSIGNMENTS BY DEBTOR**

8 B. L. R., 701

(I. L. R., 19 All., 78

L. R., 23 I. A., 106

See **NEGOTIABLE INSTRUMENTS ACT, s. 13**

(I. L. R., 17 Mad., 85

TITLE-DEEDS—concluded.**Possession of—**

See EVIDENCE—CIVIL CASES—MODE OF
DEALING WITH EVIDENCE.

[2 W. R., P. C., 1
8 Moore's I. A., 467

See REGISTRATION ACT, 1877, s. 50.

[I. L. R., 18 Bom., 444

Production of—

See INSPECTION OF DOCUMENTS.

[5 Bom., O. C., 152
I. L. R., 10 Calc., 808

See ONUS OF PROOF—DECLARATION OF
TITLE . . . 6 B. L. R., 144

See TITLE—EVIDENCE AND PROOF OF
TITLE—GENERALLY 6 B. L. R., 144
[19 W. R., 162

Refusal to produce—

See RIGHT OF WAY.

[I. L. R., 15 All., 270

Suit to recover—

See JURISDICTION—SUITS FOR LAND—
GENERAL CASES I. L. R., 4 Calc., 322

See LIMITATION ACT, 1877, ART. 49.

[I. L. R., 15 Mad., 157

TITLES OF HONOUR.

See PLAINT—FORM AND CONTENTS OF
PLAINT—DEFENDANTS.

[12 B. L. R., 443, 445 note

TODA GARAS HAQ.

See DUTIES.

[2 Bom., 253: 2nd Ed., 239
7 Bom., A. C., 50

See LIMITATION ACT, 1877, ART. 144—
IMMOVEABLE PROPERTY.

[13 B. L. R., 254
I. L. R., 1 I. A., 34

See PENSIONS ACT, 1871, ss. 3 AND 4.

[I. L. R., 1 Bom., 203
I. L. R., 4 Bom., 443
I. L. R., 5 Bom., 408
I. L. R., 8 I. A., 77

See PENSIONS ACT, 1871, s. 11.

[I. L. R., 4 Bom., 432

TODDY.

See BOMBAY ABKARI ACT, 1878, ss. 3, 14,
AND 24 . . . I. L. R., 6 Bom., 398

[I. L. R., 9 Bom., 462
I. L. R., 18 Bom., 428

See BOMBAY REVENUE JURISDICTION ACT,
1876 . . . I. L. R., 9 Bom., 462

TOLLS.

See SETTLEMENT—CONSTRUCTION.

[I. L. R., 17 Calc., 458

Lease of—

See BOMBAY TOLLS ACT, s. 7.

[I. L. R., 20 Bom., 688

Non-liability to—

See MADRAS LOCAL BOARDS ACTS, s. 87.

[I. L. R., 20 Mad., 16

Suit for, paid in excess.

See BENGAL ACT IX OF 1871, s. 27.

[I. L. R., 15 Calc., 259

1. ——— Lessee of tolls—*Act VIII of 1851*.—A lessee of tolls was held not to be a person employed in the management and collection of tolls within the meaning of Act VIII of 1851. IN THE MATTER OF BANKA BIHARI GHOSE

[2 B. L. R., A. Cr., 17: 11 W. R., 26

2. ——— Illegal collection of tolls—*Act VIII of 1851, s. 6—Public road*.—To justify a conviction under s. 6, Act VIII of 1851, for illegal collection of a toll on a public road, it was necessary that the road should be a public road within the meaning of s. 2 of the Act. IN RE NARENDRONARAIN SINGH . . . 6 W. R., Cr., 48

3. ——— Illegal demand of toll—*Act VIII of 1851, s. 6—Summary offence*.—A charge of an illegal demand of toll under Act VIII of 1851, s. 6, ought not to be dealt with summarily under Ch. XVIII of the Criminal Procedure Code, 1872. The power of levying tolls under Act VIII of 1851 is vested in the Lieutenant-Governor of Bengal, and is restricted to levying tolls only at the toll-bar: the establishment of a toll must be, by some distinct resolution of the Government, notified in some way or other by the Government. The word "extortionately" in s. 6 of Act VIII of 1851 is not used in the same sense as it is used in the Penal Code, but as meaning an unlawful demand of toll accompanied by pressure, the pressure in this case being the exercise of the powers indicated in s. 3 of the Act by seizing the complainant's horses and carts and detaining them until the toll was paid. UTTOM CHUNDER GANGOOLY v. ISSUR CHUNDER MOOKERJEE

[22 W. R., Cr., 76

TORT.

See CASES UNDER DAMAGES—MEASURE
AND ASSESSMENT OF DAMAGES—TORTS.

See CASES UNDER DAMAGES—SUITS FOR
DAMAGES—TORTS.

See ENCROACHMENT.

[I. L. R., 17 Mad., 368

See MINOR—LIABILITY FOR TORTS.

[3 N. W., 191

Action framed in—

See MINOR—LIABILITY OF MINOR ON, AND
RIGHT TO ENFORCE, CONTRACTS.

[I. L. R., 24 Calc., 265

TORT—concluded

- See **RIGHT OF SUIT—SURVIVAL OF RIGHT**
[I. L. R., 13 Bom., 877]
- See **WRONGFUL DISTRAINT**.
[I. L. R., 25 Calc., 285]

TORT FEASORS

- See **CASES UNDER CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS**.
- See **RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES**
[I. L. R., 14 Bom., 408]

TORTURE

- See **ABETMENT—TORTURE**
[7 W. R., Cr., 3
21 W. R., Cr., 11]
- See **POLICE OFFICER**. 7 W. R., Cr., 3

TOTAL LOSS

- See **INSURANCE—MARINE INSURANCE**
[8 B. L. R., 218; 7 B. L. R., 347
3 Bom., A. C., 1
Bourke, O. C., 17, 328]

TOWAGE, LIEN FOR—

- See **BOTTOMRY BOND**. 6 B. L. R., 323

TOWAGE CONTRACT

- See **ACTION IN REM**
[I. L. R., 10 Calc., 885]

TOWING, RULES FOR

- See **STEAM TUGS**. 1 Hyde, 293
[2 W. R., P. C., 51; 8 Moore's L. A., 103]

TOWN DUTIES, BOMBAY

Act XIX of 1844—*Suit to levy a tax on cotton and cotton seeds purchased in, and exported from, Proach—cess illegal—Agency—Trust*.—The plaintiff, manager and part proprietor of a Vallabhabharya temple at Broach, sued the defendant to establish the right of the temple to levy a cess on cotton and cotton seed purchased in Broach and exported from it. The defendant denied the plaintiff's right and contended (*inter alia*) that, even if the right existed until 1814, it was then abolished by Act XIX of that year, which "enacted that from the first day of October 1814 all town duties, kasubias, molatphas, bulat taxes, and cesses of every kind on trades and professions, under whatever name, levied within the Presidency of Bombay, and not forming a part of the land revenue, shall be abolished." Held that Act XIX of 1814 applied to the cess claimed by the plaintiff. The expression "cesses of every kind"

TOWN DUTIES, BOMBAY—concluded.

included the cess on cotton and cotton seeds, and absolutely put an end to the right, if any existed, of the Government or of any private individual of levying the same. Held also the suit could not be regarded as a suit for money had and received by the defendant to the plaintiff's use, or as one to recover money received by the defendant as trustee or agent. **GOWAMI SHRI PURUSHOTAMJI MAHARAJ v. ROSS**
[I. L. R., 8 Bom., 398]

TRADE

Contract in restraint of—

- See **CASES UNDER CONTRACT ACT, s. 27**

TRADE MARK.

- See **DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TOSTS**
[I. L. R., 10 Bom., 817]
- See **INJUNCTION—SPECIAL CASES—TRADE MARK**
[B. L. R., Ap., 4
(Cor.), 160
I. L. R., 17 Bom., 684]

1 Injunction to restrain use of trade marks—*Combination of figures*.—The plaintiffs, from 1872, imported and sold an article described as 7½ lb grey shirtings, and marked as follows: "In the centre of each piece of cloth a stamp in blue colour of a turtle in a star, with the words 'trade mark', underneath, in a semi circular form, in the name 'Heming, Galbraith & Co., Manchester,' and under this the number 39 with a star, and at the bottom of each piece the number 2008." In 1877 the plaintiffs discovered that the defendants were importing from the same manufacturers, and selling cloth of a similar quality marked as follows: "A stamp in blue colour of a rose in a square, underneath are the words 'Ralli and Mavrojani' arranged in a semi-circular form and under this the number 39 in a star, and at the bottom the number 2008." (On the facts of the case the lower Court (MacPHERSON J.) granted an *interim* injunction to restrain the defendants from so marking their cloth on the ground that it was a colourable imitation of the plaintiffs' mark and calculated to mislead the public; and on appeal the Court (GARTH, C. J. and MARBLE, J.) upheld that decision so far as to continue the injunction. *Held per GARTH, C. J.*—If the imitation of the plaintiffs' marks generally, or the use of the number 2008 in particular would be calculated to deceive or mislead the public, the defendants would be liable to an injunction to restrain their use or sale of their goods. The plaintiffs' marks were purchasing goods imported by the plaintiffs. *PER MARBLE, J.*—The number 2008 was not part of the plaintiffs' trade mark proper for on the evidence was it so associated with the plaintiffs' name as to indicate to the public that the goods bearing that number came only from the plaintiff's firm as importers; on the evidence it was merely a quality mark, and therefore

TRADE MARK—continued.

not calculated to mislead the public into the belief that they were purchasing the plaintiffs' goods, while in fact they were purchasing those imported by the defendants. *Semble*—There may be a right to exclusive use of a trade mark by traders who are importers only. *RALLI v. FLEMING*

[I. L. R., 3 Calc., 417: 2 C. L. R., 93]

2. ——— Right to use of trade mark—

Rival traders—Similarity of name.—No trader importing goods can lawfully adopt a trade mark which is calculated to cause his goods to bear in the market the same name as those of a rival trader. *TAYLOR v. VIRASAMI*

I. L. R., 6 Mad., 108

3. ——— Restraining use of trade

mark—Evidence of fraud.—The ground upon which a person is restrained from using another's trade mark is that he is gaining an advantage by the use of a particular trade mark which is the property of another. It is not necessary to prove intentional fraud, or to show that persons have been actually deceived. It is sufficient if the Court be satisfied that the resemblance is such as would be likely to cause the one mark to be mistaken for the other. *EWING v. GRANT, SMITH & Co.*

2 Hyde, 185

BALFOUR & Co. v. KILBURN & Co.

[1 Hyde, 270]

4. ——— Possession and use of trade

mark—User in foreign market—Abandonment—Estoppel by conduct.—Such possession and use of a trade mark in one market as to constitute a right in it establishes in the owner thereof an exclusive right to that trade mark in other markets, although the owner may not have used it in such markets. To constitute a mark a trade mark, it must have been adopted as a symbol devised to distinguish a particular class of goods as the goods of that class manufactured or selected by a particular manufacturer or merchant. Where the plaintiffs by their conduct let the defendant to believe that they claimed no right to a certain trade mark, and that it was open to the defendant to adopt it as his own, and the defendant did adopt it, and by his industry secured a wide popularity for it in the Indian market,—*Held* that the plaintiffs were estopped from denying the defendant's right to use the trade mark in the Indian market. *LAVERGNE v. ROOPER*

[I. L. R., 8 Mad., 149]

5. ——— Right of exclusive user—

Infringement—Combination of numerals as a trade mark—Injunction.—The question of the right to the exclusive user of a trade mark or trade number is largely, if not entirely, a question of fact, and the question whether it exists in any given case must depend upon whether the evidence in that case is sufficient to show such an association or connection between the mark or the number and the firm which uses it as to indicate to the ordinary purchasers in the market that the goods are the goods of that particular firm. To show that a particular trade number has acquired a reputation in the market, and that purchasers buy the goods by that number and not from an examination of the nature or quality of the cloth, is not sufficient to establish the

TRADE MARK—continued.

right of exclusive user of that number. There must be such an association between the number and the firm's name as to indicate in the understanding of the public that the goods bearing that number came from that particular firm. The right of exclusive user of a name or a number as a trade mark is not an absolute and unqualified right which would entitle the owner to prevent another person from using it under all circumstances. It is only when the use of that name or number deceives or is reasonably likely to deceive the public that it can be interfered with or prevented. There must be a reasonable probability of purchasers being deceived; it is not enough to show a mere possibility of deception. *BARLOW v. GOBINDRAM*

[I. L. R., 24 Calc., 364
1 C. W. N., 281]

6. ——— Offence of using false or counterfeit trade-mark—Penal Code (Act XLV of 1860), ss. 482, 486—Prosecution after one year from first discovery of offence—Limitation—Merchandise Marks Act (IV of 1889), s. 15.—A complainant having, in 1893, discovered that goods were being sold marked with what was alleged to be a counterfeit trade-mark, called upon the persons so selling to discontinue the use of the said alleged counterfeit trade-mark and to render an account of sales. The right to proceed further was reserved, but no action was then taken. In 1898, upon its being ascertained that the same trade-mark was being used, a prosecution was commenced. *Held* that, inasmuch as the complainant had not shown that he believed the use of the alleged counterfeit trade-mark had been discontinued after his first discovery and complaint in 1893, the prosecution was time-barred under s. 15 of the Indian Merchandise Marks Act, 1889; and that the complainant must enforce his remedy by civil process. *RUPPELL v. PONNUSAMI TEVAN*

[I. L. R., 22 Mad., 488]

7. ——— Selling books with counterfeit property mark—Penal Code (Act XLV of 1860), s. 486—Goods—Indian Merchandise Marks Act (IV of 1889).—Books are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian Merchandise Marks Act (IV of 1889); therefore, when a person sells books with a counterfeit property mark, he commits an offence under s. 486 of the Indian Penal Code. *KANAI DAS BAIRAGI v. RADHA SHYAM BASAK*

I. L. R., 26 Calc., 232
[3 C. W. N., 97]

8. ——— User of and property in trade mark—Proof of trade mark—Importation and sale of articles with particular marks impressed upon them—Succession by one Bank to business of another—Merchandise Marks Act (IV of 1889), s. 3—Penal Code (Act XLV of 1860), ss. 485 and 486.—A mark to be a trade mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mere fact that a Bank imported and sold gold bars with a particular mark impressed upon them, a mark which was not originally theirs, but belonged to a Bank that had ceased to exist and where there was no proof of any transfer or assignment of the mark, or that the new Bank succeeded the other in the sense either that

TRANSFER OF CIVIL CASE—continued.**1. GENERAL CASES—continued.**

from a Court to which the District Court was itself subordinate. A suit sent by the High Court to a subordinate Court under a remand to the High Court by Her Majesty's Order in Council, and in which, under the Council's remand order, the plaint has been amended, a new statement filed, and new issues framed, is substantially a new suit. **MAHOMED ZAHOR ALI KHAN v. RUTTA KUNWOOR** 2 N. W., 481

7. *Civil Procedure Code (1882), s. 25—Suit transferred to his own file by District Judge—Appeal to High Court—Remand to District Judge under s. 562 of the Civil Procedure Code—Power of Judge to transfer.*—By order of a District Judge under s. 25 of the Code of Civil Procedure a suit was transferred from the Court of the Subordinate Judge to his own Court. The District Judge decided the suit, and from his decree there was an appeal to the High Court. The High Court remanded the suit under s. 592 of the Code to the Court of the District Judge. The latter transferred the suit so remanded for trial to the Subordinate Judge. *Held* that the District Judge had then no power to transfer the suit, but was bound to try it himself. *Semle*—That s. 25 of the Code of Civil Procedure has no application to a case remanded under s. 562 of the Code. **SITA RAM v. NAUNI DULAIYA**

[I. L. R., 21 All., 230]

8. *Civil Procedure Code, 1859, s. 6—Transfer of part-heard case to be completed in another Court.*—S. 6 of Act VIII of 1859 did not authorize the taking a case in progress of trial off the file of a Subordinate Judge in order that it might be completed by the Judge himself of some other Court. It is clear that such transfer must take place on the institution of the suit. **RAM NATH v. GOWHUR** 2 N. W., 230

DUMREE SAHOO v. JUGDHAREE 13 W. R., 393

ABDOOL HYE v. MACRAE 23 W. R., 1

9. *Civil Procedure Code, 1859, s. 6—Transfer after evidence has been taken.—Quære—Whether a case could be transferred from one Court to another, under s. 6, after the evidence had been taken in the former Court.* **ASMEKH KOONWAR v. TAYLER. KHORSHED ALI v. TAYLER** W. R., 1864, 15

10. *Civil Procedure Code, 1859, s. 6—Suit brought whilst Court is closed for vacation.*—The Court of the Principal Sudder Ameen of Thanna being closed during vacation, a plaint which, under s. 6 of the Civil Procedure Code, ought to have been instituted in that Court, was, by the order of the District Judge, referred for trial to the Assistant Judge, entered in the register of suits in the Judge's Court, and tried by the Assistant Judge. *Held*, reversing the decree of the District Court in appeal, that it was not lawful for the Judge to refer the suit, without its having first been instituted in the Principal Sudder Ameen's Court. **MOTILAL RAMDAS v. JAMNADAS JAVERDAS** 2 Bom., 42: 2nd Ed., 40

TRANSFER OF CIVIL CASE—continued.**1. GENERAL CASES—continued.**

11. *Civil Procedure Code, 1859, s. 6—District Court—Power to receive plaint when lowest Court closed.*—Where a plaintiff presented a plaint to the District Court, the Subordinate Judge's Court, in which he ought to have presented it, being then temporarily closed, it was held that the District Court could not be considered a Court of first instance, competent to receive the plaint. The decision in *In re Ganesh Sadashiv*, 5 Bom., A. C., 117, overruled; and *Motilal Ramdas v. Jamnadas Javerdas*, 2 Bom., A. C., 42, followed. **RAMAYA ELAPA v. MUHAMADBHAI** 10 Bom., 495

12. *Civil Procedure Code, 1859, ss. 5 and 6—Jurisdiction.*—*Held* that, though both suits were properly cognizable by the Court at Cawnpore, yet the Sudder Court's order, which it was competent to pass under s. 6, Act VIII of 1859, gave jurisdiction to the Principal Sudder Ameen of another district, whose decision was not liable to be set aside for want of jurisdiction, in reference to the provisions of s. 5 of that enactment. **RAM BUX v. GIRDHAREE LALL** 1 Agra, 178

13. *Evidence recorded by one officer and decision given by another.*—A suit for enhancement was filed under Act X of 1859, in the Court of a Deputy Collector. The issues were framed and the evidence recorded by an Assistant Collector, apparently not invested with the powers of a Deputy Collector, who wrote a report recommending the mode in which the suit should be disposed of. It was then disposed of by another Deputy Collector, who was probably acting at the time as Collector. *Held* that there was no power to transfer the case, and that the procedure by which the suit was heard by one officer and decided by another was illegal. **HURDYAL OOPADHYA v. MAHOMED NAEEM** 1 N. W., Part II, p. 9: Ed. 1873, 79

14. *Civil Procedure Code, 1859, ss. 5 and 6.*—Where a District Court had jurisdiction under s. 5, Act VIII of 1859, to try a suit, and defendant made no application to the Judge or communication to the plaintiff, with a view to its being tried in a different district, the case was held to be not one for the exercise of any special power by the High Court for that purpose. **KRISTO DASS KOONDOD v. ISSUR CHUNDER CHOWDERY**

[11 W. R., 189]

15. *Civil Procedure Code, 1859, s. 6—Notification giving jurisdiction as Small Cause Court—Power to transfer pending cases.*—Where, on 3rd March 1870, the Government issued a notification under ss. 4 and 5, Madras Act IV of 1863, investing the Additional Principal Sudder Ameen of Mangalore with exclusive jurisdiction to try Small Cause suits for sums under Rs 500 within the jurisdiction of the District Munsif, *Held* that the Munsif had no power after the notification to transfer to the Principal Sudder Ameen an application pending before himself at the date of the notification under s. 6 of the Civil Procedure Code,

TRANSFER OF CIVIL CASE—continued.

1 GENERAL CASES—continued

1859, the notification not being retrospective in its operation **NARAYANA MALTA v GOVIND SHETTY** [6 Mad., 18

18. ——— *Civil Procedure Code, 1859, s. 13—Power of Sudder Courts—* S. 13, Act VIII of 1859, enacted that, where a suit was brought for immovable property situated within districts subject to different Sudder Courts the Judge in whose Court the suit was brought should apply to the Sudder Court to which he was subject for authority to proceed, and the Sudder Court to which the application was made, with the concurrence of the other Sudder Court within whose jurisdiction the property was partly situated, might give authority to proceed. But no power was expressly given in the section cited, or elsewhere in the Act, to direct the transfer of a suit brought in a Court subordinate to one Sudder Court to a Court subordinate to another Sudder Court. *Quere—* Whether Sudder Courts acting in concurrence had power to make such a transfer. **BEINBER alias NAWAB MIRZA v ONDY** [I. L. R., 2 All., 241

17. ——— *Civil Procedure Code, 1859, s. 13—Family domains of the Shikha raja of Benares* Held, following S. A No 963 of 1877, decided the 14th December 1877, that the provisions of s. 13 of Act VIII of 1859 were not appli-

18 ——— *Civil Procedure Code, 1877, s. 24—Place of suing—Grounds of transfer—* s. 24 of the Civil Procedure Code does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed, and, if necessary, to stay all further proceedings within its own jurisdiction. The defendants in a suit instituted at Mainpuri who resided and carried on business at Surat,

favour of either justice or convenience on the side of the Surat Court, the suit should proceed at Mainpuri. **TILAK RAM v HARBHAIWAS** [I. L. R., 5 All., 80

19 ——— *Civil Procedure Code, 1877, s. 25—Power of High Court—* The High Court cannot make an order of transfer of a case under s. 25 of the Code of Civil Procedure unless the Court from which the transfer is sought to be made has jurisdiction to try it. **PEARY LALL MOZOOMDAR v HOMAL KISHORE DASSIA** [I. L. R., 3 Cal., 30

20. ——— *Civil Procedure Code, 1859, s. 25—Jurisdiction—* An order for the transfer of a suit from one Court to another under

TRANSFER OF CIVIL CASE—continued

1 GENERAL CASES—continued

s. 25 of the Civil Procedure Code, 1859, unless jurisdiction is conferred by the Code. **LENGARD v HULL** [I. L. R., 3 All., 134

21. ——— *Civil Procedure Code, 1877, s. 25—Transfer from Court in which a suit has been wrongly instituted.* A suit for the infringement of certain inventions, instead of being instituted in the Court having by virtue of s. 22 of Act XV of 1859, jurisdiction to entertain it, was instituted in a Court subordinate to such Court not having jurisdiction. **THE PATENT OFFICE v**

jurisdiction had properly tried the suit. **PETMAN v HULL** [I. L. R., 5 All., 371

But held by the Privy Council (reversing this decision) that under s. 25 of the Civil Procedure Code the Court had no jurisdiction to transfer the suit.

s. 6 Code, 1877, approved. A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the case was transferred by consent of parties to the Court of the District Judge for convenience of trial. Held that such transference was incompetent, and that such consent did not

22. ——— *High Court, Jurisdiction of—District Judge Jurisdiction of—* Appeal Appeal withdrawn from the District Court. *Civil Procedure Code (Act III of 1859), s. 25—* An appeal the subject matter of which was over Rs 600 in value was wrongly presented and filed in the District Court. **THE PATENT OFFICE v**

that which is incompetent to transfer under s. 25

Hull, I. L. R., 9 All., 191. L. L., 13 I. A., 134.

TRANSFER OF CIVIL CASE—*continued.*1. GENERAL CASES—*continued.*

referred to. **RAM NARAIN JOSHY v. PARNESWAR NARAIN MAHTA** . . . I. L. R., 25 Calc., 39

23. ————— *Winding-up Company—Transfer of winding-up from District Court to High Court—Companies Act VI of 1882, s. 219—Civil Procedure Code, ss. 25, 647—Stat. 24 & 25 Vict., c. 101, s. 15—Letters Patent, High Court, N. W. P., s. 9.*—There is nothing in the Indian Companies Act (VI of 1882) or the High Court's Act (24 & 25 Vict., c. 101) or the Letters Patent which prevents the High Court from calling for the record of the proceedings in the winding-up of a Company under the Companies Act, and transferring those proceedings to its own file. Such a power is given to the High Court by s. 647 read with s. 25 of the Civil Procedure Code. Where, in the proceeding in the winding-up of a Company under Act VI of 1882, an order was passed admitting the proof of a particular creditor of the Company before any liquidator had been appointed,—*Held* that this was an irregularity which by itself would justify the High Court in sending for the record. Where the District Judge conducting the proceedings in the winding-up of a Company under Act VI of 1882 had, after receiving notice of the admission by the High Court of a petition for transfer of those proceedings to its own file, drafted and placed upon the record an order which it might have been difficult for him to reconsider if the matter again came before him, and where the case appeared to be one in which serious questions of law were likely to arise which it would probably be difficult to discuss adequately in the District Court, in the absence of the authorities upon the subject and of any rules framed by the High Court for dealing with windings-up under the Act, and the case was of a kind which would probably come before the High Court in a variety of appeals from orders brought by one side or the other,—*Held* that, under these circumstances, the case was a proper one for the exercise of the High Court's jurisdiction by calling up the winding-up proceedings to its own file. **IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY**
[I. L. R., 9 All., 180]

24. ————— *Civil Procedure Code, 1882, s. 25—District Court, Power of, as to suit pending in its own Court—Ultra vires.*—S. 25 of the Civil Procedure Code (Act XIV of 1882) only enables a District Court to transfer a suit pending in a Court subordinate to itself, and not to transfer a suit which is pending in its own Court. Accordingly, where a District Judge made an order to retransfer to the original Court certain suits pending in his Court which had been previously transferred to his Court from a Subordinate Court,—*Held* that the order of retransfer was *ultra vires* and should be discharged. **SAKHARAM v. GANGARAM** I. L. R., 13 Bom., 654

25. ————— *Civil Procedure Code (Act XIV of 1882), s. 25—Transfer of execution proceedings—Insolvency proceedings—Opposing creditor's right to apply for transfer of insolvency proceedings.*—The power of transfer given by s. 25 of the Code of Civil Procedure extends to

TRANSFER OF CIVIL CASE—*continued.*1. GENERAL CASES—*continued.*

execution proceedings as well as to suits. An application to be declared an insolvent under the Civil Procedure Code is a proceeding in execution, and as such can be made the subject of an order under s. 25 of the Code. A creditor who has received notice of an insolvency petition, and whose name is entered on the record of the execution proceedings as an opposing creditor, is a "party" within the meaning of s. 25 of the Code of Civil Procedure, and may apply for a transfer of the proceedings under the section. **NAS-SARVANJI v. KHANSEDDJI DHUNJISHAH**

[I. L. R., 22 Bom., 778]

26. ————— *Ganjam and Vizagapatam Agency Courts Act (XXIV of 1839)—Validity of Agency Rule No. 22 passed under the Act—Jurisdiction of High Court to transfer suit pending in the Agent's Court to the District Court—High Courts' Charter Act (24 & 25 Vict., c. 101), s. 15.*—An order was made by a single Judge by consent of the parties, transferring a case from the Court of an Agent to the Governor, Vizagapatam, to a District Court. A further order was made by a single Judge, which, though in form an order dismissing a review petition against the first-mentioned order, was in substance an adjudication upon the question whether the High Court has jurisdiction to order the transfer of a suit from the Court of such an Agent to a District Court. *Held* that the High Court has no jurisdiction to transfer a suit pending in the Court of the Agent to the Governor, Vizagapatam, to the District Court of Vizagapatam; and that Agency Rule No. 22 made in 1840, under the powers conferred by Act XXIV of 1839, is a valid rule. **MAHARAJAH OF JEYPORE v. PAPAYYANMA**

[I. L. R., 23 Mad., 320]

27. ————— *Civil Procedure Code, 1882, s. 331—Claim below ordinary pecuniary limit.*—By virtue of s. 647 of the Code of Civil Procedure, a superior Court may, for sufficient cause, transfer a claim, registered under s. 331, to a subordinate Court for trial. **SITHALAKSHMI v. VYTHILINGA** . . . I. L. R., 8 Mad., 548

28. ————— *Reasons for transfer—Amending issues—Procedure on transfer.*—The mere transfer of a suit for the convenience of the public, or for the acceleration of business, from one subordinate Court to another, does not affect the authority of the Judge of the District Court to transfer it to his own file, or to another Court, or to re-transfer it, if he see sufficient cause for so doing; nor would the circumstance that a case had been up on appeal to the High Court on a preliminary point, and been remanded for a trial on the merits, limit the authority of the District Court Judge to bring it upon his own file, or to transfer it to the file of a Court other than that in which it was instituted. The omission of the Judge to assign his reason for transferring the case does not vitiate his proceeding. When a Judge transfers a case to his own file, he is at liberty to amend the issues first laid down, and to raise additional issues, and to go into the whole case, except upon any question upon which there has been

TRANSFER OF CIVIL CASE—continued

1 GENERAL CASES—continued

a judicial finding TARTUCKNATH MOOKERJEE v. GOURN CHURN MOOKERJEE 3 W R, 147

20 Procedure on transfer—

SINGH H W R, 465

30 Civil Procedure Code, 1852 s 25—Court to which suit transferred not taking fresh evidence—Where the trial of a suit was commenced by a subordinate Judge and then transferred by the District Judge to his own file under s. 25 of the Civil Procedure Code, and the latter did not retake the evidence but dealt with the case as it came to him from the subordinate Judge

31 Case referred to arbitration—Power of Judge to decide after transfer—A case having been withdrawn by the Judge for trial in his own Court from the Principal Sudter Ameen's Court where it had already been referred to arbitration—Held that the Judge was quite competent to decide the case himself, without necessarily being bound also to refer it to arbitration ABDO MAHOMED v. KISHAY MOHUN BURMA

[6 W. R., 200

32 Suit pending in Court of Subordinate Judge with Small Cause Court powers—Transfer to Munsif's Court—Civil Procedure Code, s 25—Munsif, Jurisdiction of—Subordinate Judge, Jurisdiction of—Provincial Small Cause Courts Act (IX of 1857), s 35 The plaintiff filed his suit as a small cause Court case in

consequence of this, the District Judge made an order, under s 25 of the Code of Civil Procedure transferring all cases above the value of Rs 50 then pending before the Subordinate Judge to his capacity as a small Cause Court to the Munsif to be tried as Munsif's Court cases. The Munsif had small Cause Court powers up to Rs 50. The plaintiff's suit was for Rs 50. The case was accordingly tried by the Munsif and the plaintiff appealed, his appeal coming up before the same Subordinate Judge before whom the suit was filed. Held that granted that the suit was a Small Cause Court suit (which was not decided) whether

TRANSFER OF CIVIL CASE—continued

1 GENERAL CASES—continued,

33 Civil Procedure Code (1852), s 25—"Court of Small Causes"—Meaning of the expression—A Court invested with Small Cause Court powers—The expression "a Court of Small Causes" in the last clause of s 25 of the Code of Civil Procedure (Act XIV of 1852) means a Court properly and strictly so called and

34 Transfer of suit by order of High Court—Duty of Court to which transfer is made—When a suit has been transferred by an order of the High Court from the Court of a subordinate Judge to the Court of the District Judge for trial it is the duty of the District Judge to try the suit himself and he is not competent to transfer the suit back to the Court of the subordinate Judge FATIMA BIBI v. ABDUL MAJID

[1 L. R., 14 All, 531

35 Civil Procedure Code (1852), s 25—Application to High Court after

High Court declined to entertain an application for transfer of the same suit from the Court of the District Judge Kari Ahmad v. Dulari Bibi 1 L. R. 6 All 235 referred to MUHAMMAD SAY DAD HUSEIN v. PURAN CHAND

[1 L. R., 20 All, 305

36 Civil Procedure Code (Act XIV of 1852), s 25—Transfer of suit from the Court of Small Causes at Calcutta to the

37 Application for transfer—Transfer of several separate suits—Separate applications—Where it is desired to have a number of suits transferred, a separate application should be made in each case for transfer KISHORE LALL v. LUTCHMEE DOSS

2 N W, 147

2 LETTIPS PATENT, HIGH COURT, CL. 13.

38 Transfer to High Court—Jurisdiction of High Court, Calcutta—Sessions Court Allahabad—The High Court at Calcutta had no jurisdiction over the Court of the Sessions Judge at Allahabad such Court not being subject to the superintendence of the High Court under the 13th section of the Charter GREAT EASTERN HOTEL COMPANY v. SECRETARY OF STATE FOR INDIA

[1 Ind. Jur., N 5, 219

TRANSFER OF CIVIL CASE—*continued.*2. LETTERS PATENT, HIGH COURT, CL. 13
—*continued.*

39. ————— *Ground for transfer—Prejudice to interests of party.*—A suit will not be removed from a Zillah Court in which it was instituted, to the ordinary original jurisdiction of the High Court, unless it be clearly shown that the interests of the party petitioning for such removal will be prejudiced by a non-removal. *BOHRADALE v. GREGORY*. *Bourke, Ex. O. C., 1*

40. ————— *Power to transfer—Grounds for transfer—Inconvenience—Expense.*—The 13th section of the Letters Patent (1865) of the High Court at Fort William gives the Court power to order a suit to be transferred for trial only where the transfer is agreed on by the parties, or for the purposes of justice; and in the absence of agreement it must be made out that there will be inconvenience amounting to this, that, if the case be tried in the Court in which it was originally laid, the trial will be unsatisfactory. The mere fact that it would be less expensive to try the case in the High Court is not sufficient of itself for the Court to act upon and order the case to be transferred. *OSOONERAM KHAN v. NOBINMOHNEY DOSSEN*. . 1 Ind. Jur., N. S., 396

41. ————— *Ground for transfer—Nature of questions for disposal—Conduct of Judge.*—On an application under the Letters Patent, 1865, cl. 13, for the removal of a suit,—*Held* that, having regard to the whole circumstances connected with the case from the beginning, the questions to be disposed of, and the conduct of the Judge before whom the proceedings were, it was proper and necessary for the purposes of justice that the suit should be removed. *THAKOOR KAPILNATH SAKAI DEO v. GOVERNMENT*. . 10 B. L. R., 188

42. ————— *Ground for transfer—Nature of questions for disposal—Local prejudice.*—The Court refused to transfer a case from the mofussil, where there were, among other alleged reasons, suggestions that the plaintiff's case might be prejudiced by being tried in the mofussil, and that difficult and intricate questions of law would arise in the case, the Court not being satisfied by the evidence that such reasons existed. *COURJON v. COURJON*
[9 B. L. R., 10

43. ————— *Ground for transfer—Consent of parties—Expense.*—A suit for an account and for other relief relating to immovable property situated without the local limits of the ordinary original civil jurisdiction of the High Court, was instituted against several defendants in the Court of the Subordinate Judge of the district within which the property was situated. Upon a petition by one of the defendants, consented to by most of the other defendants and by the plaintiff, the High Court ordered the suit to be removed from the Court in which it had been instituted, to be tried and determined by the High Court as a Court of extraordinary original jurisdiction on the grounds that the parties and the witnesses resided in Calcutta, that it would be cheaper

TRANSFER OF CIVIL CASE—*continued.*2. LETTERS PATENT, HIGH COURT, CL. 13
—*continued.*

to try the suit in Calcutta, and that all parties appearing on the motion desired a transfer. *PAYN v. ADMINISTRATOR GENERAL OF BENGAL*

[I. L. R., 8 Cal., 766: 6 C. L. R., 221

44. ————— *Ground for transfer—Difficult questions of English law in case.*—The Court will order a suit to be removed from the mofussil, and tried in the High Court, when difficult points of English law arise, and when generally it appears to be an unfit case to be tried in the mofussil. *DOUGETT v. WISE*. . . 1 Ind. Jur., N. S., 94

45. ————— *Ground for transfer—Questions of English law—Parties—British subjects and residents of Calcutta.*—Where a case was originally tried by a Zillah Judge, and on appeal to the High Court on its appellate side the Judges of that Court remanded it to the Court below for a fresh trial, intimating that it was a proper case to be transferred under cl. 13 of the Letters Patent constituting the High Court; and where it appeared that questions of English law were involved in the case, that the witnesses and parties were chiefly British subjects, and the plaintiff an officer of the High Court and resident in Calcutta, the Court ordered the case to be transferred for trial to the High Court, original jurisdiction. *DOUGETT v. WISE*

[1 Ind. Jur., N. S., 227

46. ————— *Ground for transfer—Sale in execution of decree—Order winding up company.*—On 25th October 1870 a petition for the winding up of the *B T E* Company of Assam was presented to the Court of Chancery in England by one of the shareholders of the Company, and a provisional liquidator was appointed. On 5th November, at an extraordinary meeting of the Company, it was resolved that the Company should be wound up, and liquidators were appointed. On 12th November the petition for winding up came on for hearing, and an order was made that the voluntary winding up should continue, subject to the supervision of the Court. On 18th November, by deed under the hands and seals of the liquidators, *M* was appointed their attorney in India. On 27th October certain immovable properties in Assam belonging to the Company were attached in execution of decrees in certain suits in the Court of the Munsif of Debroghur. On 9th December the properties were put up for sale, and purchased at prices which, it was alleged, were considerably under their value. Applications were made in the Munsif's Court at Debroghur by the purchasers for confirmation of the sales, which applications were opposed by *M*, and pending the Munsif's decision, an application was made to the Deputy Commissioner of Luckimpore for an order to stay all proceedings in the decree-suits, on the ground of the order for winding up the Company of 12th November, which application was refused on 15th February 1871. On 16th February 1871 the Munsif made an order confirming the sales. *M* thereupon petitioned the High Court for the removal of the suits from Assam to the High Court, to be tried in its extraordinary

TRANSFER OF CIVIL CASE—continued**2. LETTERS PATENT, HIGH COURT, CL. 13**
—continued

original civil jurisdiction, on the ground that no appeal would lie against the order of 15th February refusing to stay the proceedings in the suits, and that, if an appeal should be preferred to the Deputy Commissioner from the order of the Munsif confirming the sales, his decision would be final. The application was opposed on behalf of the purchasers. *Held* the Munsif, not having had notice of the winding up order of 12th November, had power to sell the property. *See* *Chandrasekhar v. The State of Mysore*, 11 B. L. R., 305.

was not a proper case for the exercise of the power which the High Court possesses under cl. 13 of the Letters Patent. **IN THE MATTER OF DECREE SUITS IN THE COURT OF MUNSIFF OF DEBBANGH**

(7 B. L. R., 305)

47. — *Law governing case.*—Where a suit was originally instituted in the Hooghly Court, and H. S., who was a defendant, and

have the suit removed to the High Court, admitted the jurisdiction of that Court to try the suit in the exercise of its extraordinary original civil jurisdiction, and could not afterwards dispute the jurisdiction. The law, therefore, to be administered by the High Court must be the same law and equity which ought to have been applied if the suit had been tried in the Court at Hooghly. *Per* MacKENZIE, J.—*The law*

48. — *Letters Patent, High Court, 1855 cl. 13—Grounds for transfer—Practice.*—In a suit for immovable property instituted in the Muzaffarpur Court the defendant applied for its transfer to the High Court under cl. 13 of the Letters Patent on the grounds upon which the transfer was asked for being that questions of difficulty arose in the suit; that the defendant's witnesses lived

TRANSFER OF CIVIL CASE—continued**2. LETTERS PATENT, HIGH COURT, CL. 13**
—concluded

one to be transferred to the High Court. **HARENDRA LALL ROY v. SARYAMANGALA DASS**

[L. R., 24 Cal., 183]

SURYOMONGOLA DEBI = HARENDRA LALL ROY

[1 C. W. N., 109]

49. — *Application for transfer—Before whom application should be made.*—An application to the High Court to remove a case from a District Court, and to try it as a Court of extraordinary original jurisdiction, under s. 13 of the Charter, should be made to a Judge sitting on the original side of the Court. **DORRIS = WISE**

[4 W. R., 7]

3 GROUND FOR TRANSFER

50. — *Expense, convenience, on other good reason—Civil Procedure Code, Act IV of 1882, s. 23—Practice.*—S. 23 of Act XIV of 1882 is only intended to provide for those cases where, on the ground of expense or convenience, or some other good reason the Court thinks that the place of trial ought to be changed. Parties desirous of obtaining the transfer of a case from one forum to another ought clearly to explain to the Court by petition and affidavit what is the nature of the claim and the defence they should further state what are the issues and the evidence required, and then satisfy the Court that, either on the ground of expense or convenience, or otherwise, the place of trial ought to be changed. **KHATISA BIBI v. TAREK CHUNDER DEBI** L. R., 9 Cal., 880; 13 C. L. R., 183

51. — *Portion of property in another jurisdiction—Civil Procedure Code, 1877, s. 23—Procedure.*—The fact that a portion of property, the whole of which is sued for in the Court of the Munsif of A, is of less value than the remaining portion which is within the jurisdiction of the Munsif of B is no sufficient ground for an application under the Code of Civil Procedure, s. 23 for a transfer to the latter Court. A party applying under s. 23, Act V of 1877 must first of all give notice to the other party or side, the application should then be received by the Munsif and transmitted to the High Court through the District Court. **PERKINS JOSE v. DEOY PANDAY** 3 C. L. R., 352

52. — *Suit for partition of property partly in Calcutta and partly in mofussil.*—In a partition suit instituted in the Second Subordinate Judge's Court of the 21 Pargannas, the parties being residents of Calcutta, when the property sought to be partitioned consisted of (a) movable property situate in Calcutta, (b) immovable property, parts of which was in Calcutta, the rest being in the immediate vicinity, and when it appeared that, if tried in Alipore, an Amcen would have to partition the Calcutta property, and that the suit could be more expeditiously and cheaply tried in the High Court. *Held* that the case was a proper one to be transferred to the High Court to be tried on

TRANSFER OF CIVIL CASE—concluded.**3. GROUND FOR TRANSFER—concluded.**

the original side, and an order was made accordingly.
JOTENDRO NAUTH MITTER v. RAJ KRISTO MITTER
 [I. L. R., 16 Calc., 771]

TRANSFER OF CRIMINAL CASE.

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| 1. GENERAL CASES | 9163 |
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See **APPEAL IN CRIMINAL CASES—ACTS—**
BURMA COURTS ACT.

[I. L. R., 4 Calc., 667]

See **CASES UNDER COMPLAINT—POWER**
TO REFER TO SUBORDINATE OFFICERS.

See **CRIMINAL PROCEDURE CODES, s. 526A.**
 [I. L. R., 15 Calc., 455]

See **CRIMINAL PROCEEDINGS.**

[I. L. R., 12 All., 66]

I. L. R., 14 All., 346

I. L. R., 19 Mad., 375

See **HIGH COURT, JURISDICTION OF—**
MADRAS—CRIMINAL.

[I. L. R., 12 Mad., 39]

See **MAGISTRATE, JURISDICTION OF—**
GENERAL JURISDICTION.

[I. L. R., 23 Calc., 44]

See **MAGISTRATE, JURISDICTION OF—**
POWERS OF MAGISTRATES.

[I. L. R., 13 All., 345]

4 C. W. N., 821

I. L. R., 22 Mad., 148

I. L. R., 22 Bom., 549

See **MAGISTRATE, JURISDICTION OF—**
SPECIAL ACTS—CATTLE TRESPASS
ACT, 1871 I. L. R., 23 Calc., 300, 442

See **MAGISTRATE, JURISDICTION OF—**
WITHDRAWAL OF CASES.

[I. L. R., 14 Mad., 399]

I. L. R., 15 Mad., 94

I. L. R., 22 Bom., 549

See **POSSESSION, ORDER OF CRIMINAL**
COURT AS TO—TRANSFER OR WITH-
DRAWAL OF PROCEEDINGS.

[I. L. R., 22 Calc., 889]

See **SECURITY FOR GOOD BEHAVIOUR.**

[I. L. R., 16 All., 9]

I. L. R., 19 All., 291

1. GENERAL CASES.

1. ——— Power to transfer—Criminal
Procedure Code, 1882, s. 178—Reference to High
Court—Burma Courts Act (XVII of 1875),
s. 80.—The Local Government has no power, under
s. 178 of the Code of Criminal Procedure, to transfer

TRANSFER OF CRIMINAL CASE
—continued.**1. GENERAL CASES—continued.**

for trial to the Court of a Commissioner a criminal case duly committed for trial to the Court of the Recorder of Rangoon; but the Local Government has the power to transfer a case from the district of Rangoon to the Sessions Division of Pegu. **QUEEN-EMPRESS v. NGA THA MOUNG**
 [I. L. R., 10 Calc., 643]

2. ——— Criminal Procedure Code, 1882, s. 526—District Magistrate and Civil and Sessions Judge (quā Magistrate) of Bangalore subordinate to High Court.—The District Magistrate and the Civil and Sessions Judge of the Civil and Military Station at Bangalore are Magistrates subordinate to the High Court at Madras within the meaning of s. 526 of the Code of Criminal Procedure. The High Court therefore has power to transfer a case from the Courts of those Judges to any other Criminal Court. Under the circumstances disclosed, the High Court transferred this case. SCOTT v. RICKETTS
 [I. L. R., 9 Mad., 356]

3. ——— Power of High Court, Bombay—Criminal Procedure Code, 1882, s. 526—Act III of 1884, s. 11—Cantonment Magistrate, Secunderabad.—The High Court of Bombay having been vested, by notification of the Governor-General of India in Council, No. 178, of 23rd September 1874, with original and appellate criminal jurisdiction over European British subjects, being Christians, resident, amongst other places, at Secunderabad, outside the Presidency of Bombay and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad in his character of a District Magistrate is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within the contemplation of s. 526 of the Code of Criminal Procedure (Act X of 1882), as amended by Act III of 1884, s. 11; and the High Court possesses, by virtue of the appellate jurisdiction so vested in it, the power of transferring a criminal case pending in the Cantonment Magistrate's Court either to itself or to any criminal court of equal or superior jurisdiction. The High Court, by an order under s. 526 of the Criminal Procedure Code (Act X of 1882), transferred the present case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad. **QUEEN-EMPRESS v. EDWARDS**
 [I. L. R., 9 Bom., 333]

4. ——— Power of High Court, Bombay—Aden Act II of 1864—Transfer of case from Court of Political Resident at Aden—Criminal Procedure Code, 1882, s. 526.—A prisoner charged with having committed murder at Aden was committed by the Magistrate there on the 26th August 1885 for trial before the Political Resident at Aden, by whom he was convicted and sentenced to death on the 1st September 1885. On the 26th January 1886 the High Court of Bombay reversed the conviction

TRANSFER OF CRIMINAL CASE
—continued

1. GENERAL CASES—continued.

and sentence, on the ground that the Court of the Resident had no jurisdiction over the Island of Perim, and that the Resident not having been appointed a Judge of a Court of Session for that island, was not competent to try the prisoner. The High Court ordered a trial before a competent Court. On the 10th February 1886 the Government of Bombay issued the notification (No. 823) above set forth. On the 11th March 1886 an application was made to the High Court of Bombay for the transfer of the case to another Court of Session or to the High Court for trial. *Held* that Perim is a Sessions Division, and that, after the establishment, under the Code of Criminal Procedure, of a Court of Session for the Perim Sessions Division and the appointment of the Resident at Aden as Sessions Judge of that Court the accused stood properly committed to a Court of Session. The High Court therefore could transfer the case from that Court under s. 526 of the Code, to any other Court of equal or superior jurisdiction or to the High Court of Bombay. *Per* BIRDWOOD, J.—The High Court cannot, under s. 526 of the Criminal Procedure Code (Act X of 1872) any more than

8 Bom. 312, distinguished. *Per* JARDINE J.—After the High Court has annulled the proceedings in the Court of the Resident at Aden as without jurisdiction the case could not be treated as still pending in his Court; and as there was no Court of Session in existence at the time of the commitment it necessarily followed that the case remained in the Magistrate's Court. But whether the case was com-

European British subject. *Jurisdiction of High Court to transfer—Grounds for transfer—Criminal Procedure Code (Act X of 1872), s. 526—Act XXIV of 1855—Soulful Proceedings—The Court of a Magistrate in the South Perim is as regards the trial of a European British subject, subordinate to the High Court and the High Court has power under s. 526 of the Criminal Procedure Code to direct the transfer of a case in which such subject is concerned. The transfer of a case should be ordered when there are circumstances which may reasonably lead the Magistrate to believe that the Magistrate has to some extent prejudiced the case against him and will in consequence be prejudiced in the trial. *IN THE MATTER OF THE PRISONER OF WILSON* I L. R., 18 Cal., 347*

TRANSFER OF CRIMINAL CASE
—continued.

1. GENERAL CASES—continued

6 ——— Transfer to High Court—*High Courts' Criminal Procedure Act (X of 1872), s. 147 (Criminal Procedure Code, 1872 s. 526) and s. 115—Case referred to High Court—Reference to Police Magistrate—Soulful—That the "case" mentioned in s. 147 of the High Courts' Criminal Procedure Act (X of 1872) must refer to some question in the nature of a criminal proceeding, and not to a matter of a quasi civil character such as the reference to a Police Magistrate contemplated in s. 115. *PER RAMADAS SAMALDAS FETTER MADAVJI DRAHANSI* 13 Bom., 217*

7 ——— *High Courts' Criminal Procedure Act, 1872 s. 147 (Criminal Procedure Code 1872, s. 526) "Other proceedings"—*

sions of that section. *IN THE MATTER OF THE PETITION OF CHAKOO CHUNDER MULLICK CHABOO CHUNDER MULLICK & EMPLOYEES*

[I L. R., 9 Cal., 397]

8 ——— *Acquittal—Precedency Magistrates Act (IX of 1877) s. 141—Municipal Act (New Act IX of 1875), ss. 75-79—The powers of interference given to the High Court by s. 147 of the High Courts' Criminal Procedure Act were not intended to be exercised in the case of an acquittal by the Magistrate but only in the case of convictions or other orders whereby a defendant is a grieved or injured CORPORATION OF CALCUTTA & HIRECHAND NARAI alias HIRECHAND NARAI I L. R., 2 Cal., 330*

9 ——— *High Courts' Criminal Procedure Act, 1872 s. 147 (Criminal Procedure Code, 1872, s. 526)—Notice to press enter—Penal Code ss. 292 and 294—Specific charge—Procedure on transfer to High Court—In an application for the transfer of a case under s. 147, Act X of 1872 in which the prisoner has been convicted and is undergoing imprisonment it is in the discretion of the Court to order for sufficient prima facie case shown that the case be removed without notice to the Crown. *Soulful* A charge under ss. 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate in convicting, should in his declaration state distinctly what were the*

has been given the High Court when the case has been transferred under s. 147 Act X of 1872, may either try the case de novo or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained. *QUEEN v. UNDEKOVATH DOSS* I L. R., 1 Cal., 330

TRANSFER OF CRIMINAL CASE —continued.

1. GENERAL CASES—continued.

10. ———— *High Courts' Criminal Procedure Act, 1875, s. 147—Transfer of case before Magistrate—Power to issue mandamus.*
—A charge was made against the accused of using criminal force under s. 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided it did not amount to the offence charged. *Held* that, assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to commit the defendants; it was not a case where the Magistrate had declined jurisdiction; he had exercised his jurisdiction and heard the case. *Held* also it was not a case which the Court could transfer under s. 147 of the High Courts' Criminal Procedure Act. *EMPRESS v. GASPER*
[I. L. R., 2 Calc., 278]

11. ———— *High Courts' Criminal Procedure Act, 1875, s. 147—Case transferred to High Court—Refund of fine on quashing conviction—Notes of evidence taken by Magistrate.*
—The High Court had no power, under s. 147, Act X of 1875, to order a fine to be refunded on quashing a conviction. The Court in this instance decided whether the case should be transferred under s. 147 on the notes of the evidence taken by the Magistrate at the trial. *QUEEN v. JEEBUN BUX*
[I. L. R., 1 Calc., 354]

12. ———— *High Courts' Criminal Procedure Act, 1875, s. 147—Costs—Police Magistrates—Notes of evidence.*—In a case transferred to the High Court under s. 147, Act X of 1875, the Court had no power to give costs. *Semble*
—The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the judicial officers of all Criminal Courts subject to the Act. *IN THE MATTER OF LOUIS. IN THE MATTER OF BENGAL ACT VI OF 1866*
[15 B. L. R., Ap., 14]

13. ———— *Power of District Magistrate—Power to call for case—Procedure when, having called for it, he finds it out of his jurisdiction.* The Magistrate of the district has authority to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. If the Magistrate, having in the exercise of his authority withdrawn any case, finds that it did not come within the jurisdiction of his Magistracy, he would not merely be competent, but bound to refuse to proceed further with the case. *VILATTEE KHANUM v. MEHER ALI*
[24 W. R., Cr., 4]

14. ———— *Held* that, although the Magistrate of a district is competent to order the removal of any particular case from the file of a subordinate Court to his own, it is doubtful whether he can by general proceeding direct the transfer of cases which have no existence, and which

TRANSFER OF CRIMINAL CASE —continued.

1. GENERAL CASES—continued.

are not pending before any of his subordinates. *GOVERNMENT v. GIRDHAREE LALL*

[I. Agra, Cr., 24]

15. ———— *Criminal Procedure Code (1882), ss. 526 and 192—Transfer of criminal case by the High Court to the Court of a District Magistrate—Interpretation of order—Practice.*—When a criminal case is transferred by an order of the High Court from a Court subordinate to a District Magistrate to the Court of a District Magistrate, if it is intended that the District Magistrate shall have power to transfer the case to a subordinate Court, that intention will be expressed in the order of the High Court. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply s. 192 of the Code of Criminal Procedure, and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it. *QUEEN-EMPRESS v. MATA PRASAD*

[I. L. R., 19 All., 249]

16. ———— *Application for transfer—Criminal Procedure Code, 1872, s. 64—Power of Judge acting on English committee.*—An application for the transfer of a case under s. 64 of the Criminal Procedure Code should be made, not by letter to the English Department of the High Court, but before the Court in its judicial capacity, and should be supported by affidavits or affirmation in the usual way. *QUEEN v. ZUHURUDDIN*

[I. L. R., 1 Calc., 219: 25 W. R., Cr., 27]

17. ———— *Notice of transfer—Subordinate Magistrates—Criminal Procedure Code (Act X of 1872), s. 48—Notice to the parties before the transfer is made.*—Before a Magistrate of a district can transfer a case from a Court subordinate to him to any other subordinate Court, notice of such intended transfer should be served upon the parties, so as to enable any or either of the parties, to come forward and show cause why such transfer should not be made. *IN THE MATTER OF THE PETITION OF TEACOTTA SHEKHAR. TEACOTTA SHEKHAR v. AMER MAJEE* I. L. R., 8 Calc., 393: 10 C. L. R., 239

18. ———— *Criminal Procedure Code (Act X of 1882), s. 528—Notice to accused.*—An order under s. 528 of the Criminal Procedure Code (Act X of 1882), transferring a case for inquiry or trial from one Magistrate to another, ought not to be made without notice to the accused. *QUEEN-EMPRESS v. SADASHIV NARAYAN JOSHI*
[I. L. R., 22 Bom., 549]

19. ———— *Transfer of partly-heard case—Hearing of evidence.*—Where a case which

TRANSFER OF CRIMINAL CASE

—continued

1. GENERAL CASES—concluded.

QUEEN v KULLIAN SINGH . 2 N. W., 468

The High Court, however, declined to interfere in a case of this sort, as the prisoners did not appeal or raise any objection to the trial on this ground.

KOPIL NATH SAHAI v KOSHERAM

[14 W. R., Cr, 3

2 LETTERS PATENT, HIGH COURT, CL. 29.

20. ———— *Transfer to High Court—Power to transfer—Criminal Procedure Code, 1872, s 64*—S 29 of the Letters Patent of 1863 empowers the High Court to transfer for trial before itself an appeal to a Court of Session from the sentence of a District Magistrate, and this power was not affected by s 64 of the Code of Criminal Procedure, 1872, which authorized the High Court to transfer an appeal from one subordinate Court of criminal jurisdiction to another. SITAPATHI NAYDU v. QUEEN . L L R., 6 Mad., 32

21. ———— *Power to transfer—"Competency" to investigate case*—The construction of cl 29 of the Letters Patent, 1863 is that the High Court has power, if in its discretion

competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and the punishment. QUEEN v NARADWAR QOSWAMI

[1 B. L. R., O. Cr, 15; 15 W. R., Cr, 71 note

22. ———— *Power to transfer—Power of single Judge on original side of High Court*—On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds mainly that all but one of the charges against the prisoners were for offences committed in Calcutta; that the selection of Patna as the place of trial was calculated to prejudice the prisoners; that the police at Patna were getting up the case against the prisoners by improper and illegal means; that by these means was created such a feeling of dread and

these allegations were denied by the affidavits filed in opposition to the application.—*Held* (MACRACKEN v. J., doubting) the High Court had power under

TRANSFER OF CRIMINAL CASE

—continued.

2 LETTERS PATENT, HIGH COURT, CL. 29

—concluded

cl 29 of the Letters Patent to transfer the case for trial by itself. The Court, however, refused the application, on the ground that a sufficient case had not been made out for the exercise of the power of the Court. *Per PHAR, J.*—A single Judge, sitting on the original side of the Court, has power to entertain an application for the removal of a

3 GROUND FOR TRANSFER.

23. ———— *Nature of grounds for transfer—Transfer from one Magistrate to another.*—The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another. *MAGISTRATE IN THE MATTER OF THE PETITION OF SHANKAR ADASI HOISINGH REG v SHANKAR ADASI HOISINGH* . 6 Bom., Cr., 68

24. ———— *Probability of unfair trial—Transfer from one Magistrate to another*—It is only when there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one Magistrate's Court to another. QUEEN v KISTO CHANDER GHOSH

[2 W. R., Cr., 58

25. ———— *Proof of grounds for transfer—Grounds necessary to obtain transfer when application is opposed by accused*—Before the transfer of a case from one Criminal Court to another can be made, in cases in which the accused objects to the transfer, the prosecution must bring forward the very best evidence to prove that a fair

26. ———— *Prosecution initiated by Magistrate—Conviction before same Magistrate—Transfer of appeal from Magistrate to Sessions Judge*—Where the Magistrate of the district had procured the initiation of a number of prosecutions

DURGO KUNILLA

21 W. R., Cr., 50

27. ———— *Judge forming premature opinion—Conviction—Relieving judicial officer of case he wishes not to try*—The High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made

TRANSFER OF CRIMINAL CASE —continued.

3. GROUND FOR TRANSFER—continued.

without risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid. **IN THE MATTER OF THE PETITION OF ARUNACHALLA REDDI** 5 Mad., 212

28. ———— *Criminal Procedure Code (Act V of 1898), s. 526—Expression of opinion by Magistrate in counter-case on evidence adduced.*—Where the complaint forming the subject of trial in a case before a Magistrate related to facts forming the substance of the defence in another case already tried by the same Magistrate,—*Held* that the Magistrate having had to express his opinion on the evidence, which formed the evidence for the defence in that case, it was desirable to have the complaint tried by some other Magistrate. **CHANDRAMANI SAMA v. KUNJA RENAI** . 4 C. W. N., 824

29. ———— *Reasonable apprehension in the mind of the accused—Criminal Procedure Code (1882), s. 526—Real bias—Incidents calculated to create apprehension of bias.*—In dealing with applications for transfer what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the accused, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. **DUPUYRON v. DRIVER** . I. L. R., 23 Cal., 495

FARZAND ALI v. HANUMAN PRASAD

[I. L. R., 19 All., 64

30. ———— *Probability of unfair trial—Complexity of case—Transfer from one Magistrate to another—Local investigation—Magistrate trying case, Competency of, to be witness—Competent witness—Examination of Magistrate trying case as a witness.*—Where an Assistant Magistrate with second class powers was directed by the District Magistrate to take up a case of some complexity, arising out of disputed boundaries to land, in which the accused were charged with rioting, trespass, mischief, and theft, and where, in the course of such investigation, he held a local inquiry extending over five days, during which he made a number of notes and appeared to have made a very careful and conscientious investigation of the locality, such as would properly be made by a person whose duty it was to get at the facts with a view to lay the same before some tribunal, and during such investigation it appeared that he acquired a large amount of information with reference to the occurrence on which he had to arrive at a judicial determination, but which, by reason of the way it was acquired, he could not properly or legally consider in arriving

TRANSFER OF CRIMINAL CASE —continued.

3. GROUND FOR TRANSFER—continued.

at an ultimate decision of the case (such information not being guarded by the safeguards by which statements on which a Judge or a Magistrate exercising judicial functions can act must be guarded), and where it was suggested that the notes so made should be put on the record, and the Assistant Magistrate tender himself while trying the case as a witness to be cross-examined by either the prosecution or the defence,—*Held* that such a course could not be allowed, and that the Assistant Magistrate ought not to try the case, but that it must be transferred to some other Magistrate exercising first class powers for disposal. **HARI KISHORE MITRA v. ABDUL BAKI MIAH** I. L. R., 21 Cal., 920

31. ———— *Fairness and impartiality of the jury—Criminal Procedure Code (1882), s. 526, cl. (e)—Expression of belief by the District Magistrate.*—When two such officers, as the District Magistrate and the Sessions Judge, emphatically express their belief that it will be next to impossible to obtain a fair and impartial trial if the case be heard before a jury chosen from a particular district, the bare expression of such belief, quite apart from the foundations thereof, must shake the confidence of the parties interested and of the public in the fairness and impartiality of the particular jury to try the case. An order for transfer in such cases is expedient for the ends of justice under s. 526, cl. (e), of the Criminal Procedure Code. The importance of securing the confidence of parties in the fairness and impartiality of the tribunal is next only to the importance of securing a fair and impartial tribunal. **Dupeyron v. Driver**, I. L. R., 23 Cal., 495, followed. The jury in a case triable by jury constitute a part and an important part of the tribunal. It is not quite reasonable to say, where doubt is entertained as to the fairness and impartiality of the jury, that the trial should nevertheless go on before such a jury, because an erroneous verdict may, in the end, be set right by the High Court. **Empress v. Nabo Gopal Bose**, I. L. R., 6 Cal., 491, distinguished. **LEGAL REMEMBRANCE v. BHAIKAB CHANDRA CHUCKERBUTTY**

[I. L. R., 25 Cal., 727

IN THE MATTER OF THE PETITION OF THE DEPUTY LEGAL REMEMBRANCE. QUEEN-EMPRESS v. BHAIKAB CHUNDER CHAKURBUTTY . 2 C. W. N., 65

32. ———— *Magistrate having bias against the accused—Criminal Procedure Code (1882), s. 526A.*—Where a Magistrate, in the course of an investigation under Ch. XIV of the Criminal Procedure Code, and also in the subsequent enquiry preliminary to commitment, acted in a manner indicating some bias against the accused,—*Held* the Magistrate should not proceed with the enquiry, and the case should be transferred from his file. **RATNESSARI PERSHAD NARAYAN SINGH v. EMPRESS**

[2 C. W. N., 498

33. ———— *Illegal procedure by Magistrate—Magistrate antagonistic to accused*

TRANSFER OF CRIMINAL CASE

—continued.

3. GROUND FOR TRANSFER—continued.

—*Power of High Court*—Where the procedure in the case of a person charged with an offence was found to be irregular and illegal, and the Magistrate was prejudiced and antagonistic to the prisoner, the High Court made an order (as in the *Banoorah case*, 4 B. L. R., Ap. 1), to transfer the proceedings to be tried by another officer appointed or deputed by the Government of Bengal to try the case *ABDOOL KADIR KHAN v. MAGISTRATE OF PURNIAH* [11 B. L. R., Ap. 8: 20 W. R., Cr., 23]

34 ——— Judicial officers interested in case—*Criminal Procedure Code, 1872, s. 64*—*Bad case case*—*Transfer of appeal for trial*.—Where it appeared that the only officers in the district of P other than competent to hear an appeal from a conviction for theft of property alleged to have belonged to the Road Cess Committee of the district were, by reason of their connection with

gunnals, to be dealt with as an appeal presented in his own Court IN THE MATTER OF DWARKA NATH BANERJEE 6 C. L. R., 279

35 ——— Magistrate expressing opinion unfavourable to accused—*Criminal Procedure Code, 1881 s. 86*—*Transfer by Magistrate*.—Although s. 86 of the Code of Criminal Procedure did not require a Magistrate to state his reasons for

prosecution, and had expressed an opinion unfavourable to the prosecution *QUEEN v. NOBODOOMAR BANERJEE* 14 W. R., Cr., 12

36 ——— Manipulation of order-sheet by Magistrate—*Criminal Procedure Code (Act X of 1882), s. 526*—*Inquiry preliminary to commitment*—*Dist*—*Attaching document* to record after receipt of order of High Court, staying proceedings—*Transfer, Grounds of*.—It appeared that during the course of an inquiry preliminary to commitment the entries in the order-sheet were not made by the Magistrate, as required by the rules of

offer. Held that the Magistrate had acted with impropriety and showed a bias against the accused that further proceedings should not therefore be taken before the said Magistrate and the case should be

TRANSFER OF CRIMINAL CASE

—concluded.

3 GROUND FOR TRANSFER—concluded.

transferred to another Magistrate. *ABANT RAM v. MAYBOON ROY* C. W. N., 639

37 ——— Jurisdiction—*Place of commission of offence*—*Transfer of preliminary investigation*—*Criminal Procedure Code, 1872, ss. 64 and 69*.—The High Court under ss. 64 and 69 of the Code of Criminal Procedure, directed the preliminary investigation in this case, in which the accused was charged with criminal breach of trust, to be held in Calcutta, the place where the offence charged was, if not wholly, at all events partly, committed. *QUEEN v. MACDOVALD* 22 W. R., Cr., 6

38 ——— View of the scene of the occurrence by a Magistrate trying a criminal case—*Local investigation*—*Criminal Procedure Code, s. 529*.—It is not only not objectionable, but in many cases highly advisable, that a Magistrate trying a criminal case should himself inspect the scene of the occurrence in order to understand fully the bearing of the evidence given in Court. But if he does so he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other. The fact he has held such a local investigation does not amount to a ground for transferring the case to another Magistrate. IN THE MATTER OF THE PETITION OF BALAJI I. L. R., 10 All., 302

TRANSFER OF PROPERTY.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER

[I. L. R., 5 Bom., 547
I. L. R., 5 Bom., 554]

while transferor is out of possession.

See VENDOR AND PURCHASER—BILLS OF SALE
2 B. L. R., P. C., 111

1. ——— Ownership of cotton in press—*Sale—Exchange—Trade usage*—*Proof of Contract Act*, ss. 47, 72, 151—*Transfer of Property Act*, s. 118—*Delivery of cotton to cotton press*.—According to mercantile usage in the cotton trade in Tuticorin, where a dealer delivers cotton to the owner of a cotton press, not in pursuance of any special contract, the property in the cotton vests in the owner of the cotton press who is bound to give the merchant in exchange cotton of like quantity and quality. The transaction is not a sale, but an agreement for exchange. Where therefore cotton thus delivered was accidentally destroyed by fire, Held that the loss fell on the owner of the press. *VOLKART BROTHERS v. VETTELVELU NADAY*

[I. L. R., 11 Mad., 469]

2. ——— Erection of building for school on land—*Gift of building for a school*—*Position of managers of school*—*Suit by managers for trespass and trespass*.—Where a party who, partly with his own funds and partly with the aid of

TRANSFER OF PROPERTY—continued.

by the village, erected a building for a school, never gave the property to the school, and never even acquiesced in the managers of the school entering upon it, — *Held* that the managers entered upon it as trespassers, and that, although the proprietor acquiesced in their having taken possession, he did not thereby convey any property in the school to the subscribers, and was not bound to repay that portion of the money which he expended himself in building the house, or to do more than return that portion of the funds which were subscribed by the village. **SREEHURRY ROY v. HILLS** **7 W. R., 476**

S. C. on reference on original trial

[**6 W. R., Civ. Ref., 21**]

3. ———— Sale while vendor is out of possession—Right of purchaser to sue for possession.—It is the practice of the Courts in this country to give effect to sales of property made by persons out of possession, and to recognize the title of the purchaser to maintain a suit. **RUNNOO PANDEY v. BUKSH AH** **3 N. W., 2**

KUMUROODDEEN v. BHADOO **11 W. R., 134**

AULOCK MONEE DOSSIA v. AULOCK MONEE DEBIA
[**25 W. R., 48**]

PRANKRISHNA DEY v. BISWAMBHAR SEIN
[**2 B. L. R., A. C., 207**
11 W. R., 81]

4. ———— Right of purchaser to sue for possession—Want of consideration.—Alleged purchasers whose vendors were not in possession, and who have paid nothing for what is said to have been sold to them, are not competent to maintain a suit for possession of the property in dispute. **BISHONATH DEY ROY v. CHUNDER MOHUN DUTT BISWAS** **23 W. R., 165**

See **TARA SOONDORÉE CHOWDHRAIN v. COLLECTOR OF MYMENSINGH**
[**13 B. L. R., 495: 20 W. R., 446**]

5. ———— Right of purchaser to sue for possession.—The current of High Court decisions on the question whether a purchaser from a party not in possession is competent to maintain a suit to recover the land is in favour of the right to bring a suit. **BISSESSUR DOSS v. JOYKISHORE DOSS** **25 W. R., 223**

6. ———— Wrongful disposition of vendor—Right of vendee to sue for possession.—Where a conveyance of property was made by a person who had been in possession and enjoyment for years before she was wrongfully ousted, the conveyance was held to give a right to sue for immediate possession. **BIKAN SINGH v. PARBUTTY KOORÉ**
[**22 W. R., 99**]

NITYANUND GOSSAIN v. SHAMA CHURN CHATTERJEE **23 W. R., 163**

See **GUNGA HURRY NUNDEE v. RAGHUBRAM NUNDEE** **14 B. L. R., 307: 23 W. R., 131**

7. ———— Right of assignee to sue for possession—Third parties—Requisite proof.—An assignee of property, of which the assignor

TRANSFER OF PROPERTY—continued.

was not in possession when the assignment was made, can only recover, even from the hands of third persons, upon showing that he would have a right to enforce specific performance of his contract against his assignor if the property were come back to the hands of the assignor. **BOODHUN SINGH v. LUTEE-RUN** **22 W. R., 535**

8. ———— Right of specific performance after purchase of right to sue.—Where a purchaser of a right to sue for possession brings a suit for specific performance and it is not shown that he has left undone anything necessary to entitle him to what he claims, it must be taken in special appeal that the plaintiff is entitled to insist on specific performance of his contract with his vendor. **LALLA SABIL CHAND v. GOODUR KHAN**
[**22 W. R., 187**]

9. ———— Suit by assignee for possession—Effect of bill of sale.—The assignees, *R, K, and G*, of certain property brought against the assignor, *L* and others, a suit to obtain possession of a portion of assigned property of which he, *L*, never had possession, and to obtain a declaration of right of ownership to the other portion already in the possession of one or more of themselves. *Held* that as *L*, at the time when the assignments were made, was not in either actual or constructive possession, he was unable thereby to pass the property, and that the bill of sale was only evidence of a contract to be performed in future upon the happening of a contingency. **RAM KHELAWUN SINGH v. OUDH KOORÉ** **21 W. R., 101**

And see **BOODHUN v. BOODHUN SINGH**
[**21 W. R., 156**]

10. ———— Suit by assignee for possession—Validity of transfer.—The plaintiffs sought to recover possession from the defendants of certain land, claiming under a *kararnama* executed to them by one *Mutyawa*. The defendants contended that *Mutyawa* had never been in possession of the land. The lower Appellate Court held that, as *Mutyawa* was not in possession at the time when the *kararnama* was executed, the plaintiff's claim was not maintainable. On appeal to the High Court, —*Held*, reversing the decree of the lower Appellate Court, that the circumstance of *Mutyawa's* not having been in possession at the time the *kararnama* was executed did not prevent the plaintiffs from recovering possession from the defendants. *Kalidas v. Kanhaya Lall*, **I. L. R., 11 Calc., 121: L. R., 11 I. A., 219**, referred to and followed. **UGARCHAND MANACK-CHAND v. MADAPA SOMANA**
[**I. L. R., 9 Bom., 324**]

11. ———— Sale in execution of decree—Assignment by purchaser who has not obtained possession.—Upon a sale in execution of a decree the property in the thing sold passes to the purchaser; and there is nothing in either the Hindu or the English law which debars a third person from taking an assignment of such property from the auction-purchaser, albeit it has not been reduced into possession by him. **GOVIND RAGUNATH v. GIVIND JAGOJI** **I. L. R., 1 Bom., 500**

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12. ——— **Hypothecation of property without possession—Incomplete title—Held** that the hypothecation of property to which a judgment debtor had not acquired absolute title was incomplete and insufficient to create a valid and perfect lien in favour of the mortgagee enforceable by law against the actual possessor **HERCHUND SINGH v. RAM SINGH** . . . **1 Agrs, 286**

13. ——— **Lease granted while lessor is out of possession—A valid lease cannot be granted by a person not in possession of the lands leased** **JIEMI v. KRISHO MOHUN BOSE HOVER DEY v. AKBAR ALI** . . . **1 L. R., 1 L. A., 76**

14. ——— **Rights of lessee—Suit for possession—A transfer of property of which the transferor is not at the time of the transfer in possession is not ipso facto void** Where a . . .

performance of the agreement by the plaintiff. **LOKENDRA GHOSH v. JAGDEENDRO ROY**

[**L. R., 1 Cal., 287**]

TRANSFER OF PROPERTY ACT (IV OF 1882)

See LEASE—CONSTRUCTION

[**L. R., 7 Bom., 268**]

[**L. R., 17 Cal., 828**]

See LIMITATION ACT, 1877, ART 132.

[**L. R., 10 Mad., 609**]

[**L. R., 14 Cal., 730**]

See LIMITATION ACT, 1877, ART 135

[**L. R., 10 Cal., 693**]

[**L. R., 16 L. A., 85**]

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE

[**L. R., 8 All., 388**]

[**L. R., 1 Cal., 582**]

— **Application of Act—Mortgages executed before Act came into force—“Property,” Meaning of—General Clause Act (I of 1869), s 2 cl 5, B—Held by FROX, C.J., STRAIGHT, TREVELL, and KNOX, JJ—The term “property” as used in Ch IV of Act IV of 1882, means an actual physical object, and does not include mere rights relating to physical objects. Held by the full Bench. The Transfer of Property Act (IV of 1882), so far as the question of reliefs and procedure is concerned, applies to mortgages executed before the coming into force of the Act. **Ganga Deka v. Aslam Sahai**, **1 L. R., 6 All., 262**, and **Bhabo v. Aslam Deka**, **1 L. R., 6 All., 262**, and **Bhabo v. Aslam Deka**, **1 L. R., 12 Cal., 593**, referred to. **Per MAHMOOD, J., contra**—The term**

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

“property” throughout Act IV of 1882 is used in its most generic sense, and will include the right known as an “equity of redemption” **MATA DIN KAPODHAST v. KAZIM HUSAIN**

[**L. R., 13 All., 1432**]

1. ——— **2. Mortgage executed before Act came into force—Assignment of after Act in operation—The provisions of the Transfer of Property Act apply to the assignment of a mortgage made after that Act came into force, although the mortgage may have been made before the commencement of that Act** **LALA JAGDEO SHAI v. BIRJ BEHARI LAL** . . . **1 L. R., 13 Cal., 505**

2. ——— **Mortgage—Foreclosure—Reg XVII of 1806, s 8—Provision as to the year of grace—Extension of time by mutual agreement—The years of grace allowed by a s 8, Regulation XVII of 1806, is a matter of procedure which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely. The right so acquired by the mortgagee while the Regulation was in force is a right which falls within the meaning of cl (e) s 2 of the Transfer of Property Act. Proceedings under s 8 had come to a close by the expiration of the stipulated period of extension while the Regulation**

3. ——— **Mortgage—Foreclosure—**

Suit for conditional sale—Reg XVII of 1806

— **Procedure—A suit was brought on the 21th January 1885 by a mortgagee upon a mortgage by conditional sale asking for a declaration that the mortgagor's right to redeem had been extinguished, and that he was entitled to possession of the mortgaged properties. The mortgage was dated the 6th April 1881, and the mortgage money was repayable on the 13th May 1881. On the 9th July 1881 the mortgagee caused a notice to be served on the mortgagor in compliance with the provisions of ss 7 and 8 of Regulation XVII of 1806. The year of grace expired on the 10th July 1882. It was contended by the mortgagor that, as the Transfer of Property Act came into force on the 1st July 1882, the proceedings taken by the mortgagee should be regulated by the procedure laid down in ss 66 and 87 of that Act and not by the procedure prescribed by Regulation XVII of 1806. Held that the procedure laid down by the Transfer of Property Act could not be applied to the case. Although the year of grace had not expired when that Act came into force, and the full and complete right of the mortgagee had not accrued, he had acquired the right to bring a suit under the provisions of Regulation XVII of 1806 at the expiration of the year of grace, and the mortgagor was under a liability to**

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

part with his property upon a suit being brought at the expiration of that year, and such right and liability came within the meaning of the these terms as used in cl. (c), s. 2 of the Transfer of Property Act. **MOHABIR PERSHAD NARAIN SINGH v. GUNGADHUR PERSHAD NARAIN SINGH**

[I. L. R., 14 Calc., 599]

4. ———— *Mortgage—Suit for foreclosure—Conditional sale—Reg. XVII of 1806—General Clauses Consolidation Act (I of 1868), s. 6—"Proceedings."*—In a suit for foreclosure under a deed of conditional sale, where the due date of the deed expired and notice of foreclosure was served while Regulation XVII of 1806 was in force, but before the expiration of the year of grace that Regulation had been repealed by the Transfer of Property Act,—*Held*, following *Mohabir Pershad Narain Singh v. Gungadhur Pershad Narain Singh*, I. L. R., 14 Cal., 599, that proceedings for foreclosure having been commenced under the Regulation, those proceedings were saved by s. 6 of the General Clauses Consolidation Act (I of 1868). The "proceedings" referred to in that section are not necessarily judicial proceedings only, but ministerial proceedings, as, in the present case, the service of notice of foreclosure. **UMESH CHUNDER DAS v. CHUNCHUN OJHA** . I. L. R., 15 Calc., 357

5. ———— and ss. 67, 86—*Suit for foreclosure of mortgage—Beng. Reg. XVII of 1806, ss. 7, 8—Procedure—Act I of 1868 (General Clauses Act), s. 6.*—A mortgagee by conditional sale under an instrument executed while Regulation XVII of 1806 was in force, and before the Transfer of Property Act, 1882, which repealed that Regulation, came into force, sued, after the repeal of that Regulation, for foreclosure of the mortgage, not having proceeded in accordance with the provisions of s. 8 of that Regulation. *Held* (STUART, C.J., dissenting) that the procedure of that section was not saved by cl. (c) of s. 2 of the Transfer of Property Act, but the provisions of that Act were applicable to the suit. **GANGA SAHAI v. KISHEN SAHAI**

[I. L. R., 6 All., 262]

6. ———— and ss. 67 and 99—*Attachment of property mortgaged prior to 1882.*—In 1884 a mortgagee obtained a decree for arrears of interest due under a mortgage deed of 1879, and in execution of the decree attached and applied for the sale of the land mortgaged. *Held* that by reason of s. 99 of the Transfer of Property Act, 1882, the land could not be sold otherwise than by a suit instituted under s. 67 of the said Act. **KAVERI v. ANANTHAYYA** . I. L. R., 10 Mad., 129

7. ———— and ss. 67, 99—*Mortgage-decree—Execution of decree.*—A decree-holder, who had obtained a decree in the year 1880 against his judgment-debtor, declaring his title in certain mortgaged properties and authorizing a sale, sought, after several previous applications keeping the decree alive, to execute his decree again on the 15th April 1885. The judgment-debtor objected, on the ground that no suit had been instituted or decree obtained

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

under s. 67 of the Transfer of Property Act as directed by s. 99. *Held* that s. 99 of that Act was not intended to apply to decrees already obtained declaring a lien and authorizing a sale, but even assuming that it was so intended, s. 2 of the Act saved the right of the decree-holder to obtain a sale of the mortgaged properties. *Ganga Sahai v. Kishen Sahai*, I. L. R., 6 All., 262, distinguished. **DINENDRA NATH SANNYAL v. CHANDRA KISHORE MUNSHI** . I. L. R., 12 Calc., 436

8. ———— and s. 86—*Mortgage—Conditional sale—Suit for possession on foreclosure—Beng. Reg. XVII of 1806, ss. 7, 8.*—The procedure laid down in the Transfer of Property Act may be applied to the case of foreclosure of a mortgage executed before the Act came into operation, provided it be so applied as not to affect the rights saved by s. 2, cl. (c), of the Act. Where, therefore, under the provisions of Regulation XVII of 1806, notice of foreclosure had been served on a mortgagor by conditional sale, the mortgage having been executed and the foreclosure proceedings taken before the Transfer of Property Act came into force, and after the expiry of the year of grace, the money not having been paid, the mortgagee instituted a suit for possession on foreclosure, and when such suit was defended by a third party who had purchased the mortgaged property at an execution-sale and obtained possession before the commencement of the foreclosure proceedings, and the necessary notice had not been served upon him,—*Held* that it was competent to the Court to apply the procedure prescribed by the Transfer of Property Act and grant the mortgagee a decree in the terms of s. 86, substituting the period of "one year" for the period of "six months" therein mentioned. *Ganga Sahai v. Kishen Sahai*, I. L. R., 6 All., 622, referred to. **PERGASH KOER v. MAHABIR PERSHAD NARAIN SINGH** . I. L. R., 11 Calc., 582

9. ———— *Mortgage—Foreclosure, Suit for—Mortgage by conditional sale—Beng. Reg. XVII of 1806—Procedure—Statute, Construction of.*—Where a suit is brought, after the date of the Transfer of Property Act, for the foreclosure of a mortgage dated previous to the Act, the procedure to be followed is that given by the Transfer of Property Act; the procedure of Regulation XVII, 1806, not being saved by s. 2, cl. (c), of Act IV of 1882. *Ganga Sahai v. Kishen Sahai*, I. L. R., 6 All., 262, approved. *Per WILSON, J.*—It is a general rule in construing statutes that in matters of substantive right they are not to be so read as to take away vested rights, but that in matters of procedure they are general in their operation. There is nothing in the Transfer of Property Act from which it can be beyond reasonable doubt concluded that the Legislature intended to depart from this settled principle of legislation. *Per TREVELYAN, J.*—There is a clear distinction between "relief" and the mode or procedure for obtaining such relief. The "relief" remains unaffected by a change of procedure. The "rights and liabilities" of a mortgagor and mortgagee, and the "relief" in respect of such rights and liabilities, are

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

the same under Act IV of 1882 as they were before. A different procedure for enforcing such rights and obtaining such relief has however, been adopted by the Transfer of Property Act. BHORO SUNDARI DEBI v. RAJAL CHUNDER ROSE

[I L R, 12 Calc, 583]

s 3

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING

[I L R, 21 Calc, 116]

See REGISTRATION ACT, 1877, s 40

[I L R, 16 All, 478]

Meaning of "notice"—The definition of the word "notice" in s 3 of the Transfer of Property Act (IV of 1882) correctly codifies the law as to notice which existed prior to the passing of the Act. CHURANATH v. BALI

[I L R, 14 All, 591]

s 4

See REGISTRATION ACT, 1877, s 17, CL (d). I L R, 17 Mad, 376

s 6

See ONES OF PROOF—HINDU LAW—ALIENATION I L R, 17 All, 136

See RIGHT OF SUCCESSION—MISCELLANEOUS

[2 C. W. N., 43]

1. Transferable claim—Property—Actionable claim

—Transferable claim—Civil Procedure Code, s 266 —Execution of decrees—Attachment—Under the Transfer of Property Act, "property" includes an actionable claim. LUDRA PRAKASH MISSE v. KRISHNA MORTY GHATGEK

[I L R, 14 Calc, 241]

2. Recreational right—Assignment of the interest of a Hindu reversioner

Assignment of the interest of a Hindu reversioner

Assignment of the interest of a Hindu reversioner

Assignment of the interest of a Hindu reversioner

[I L R, 25 Calc, 776]

3. Mesne profits, right to recover, Transferability of—Actionable claim—

Transfer of Property Act, s 130—A right to recover mesne profits which are in the nature of damages is not transferable. DURGAT CHANDRA ROY v. HOJLAH CHUNDER ROY

[3 C. W. N., 43]

s 7

See MORTGAGE—LIABILITY OF MORTGAGEE, AND RIGHT TO ENFORCE, CONTRACTS

[I L R, 23 Bom, 146]

s 8

See REGISTRATION ACT s 19

[I L R, 16 Mad, 464]

See SELLER AND PURCHASER—PROMISES, RIGHTS OF

[I L R, 22 Bom, 610]

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

1. s 10—Married Woman's Property Act (III of 1874), s 8—Restraint on anticipation.—S 10 of the Transfer of Property Act merely excepts from the general rule laid down in s 8 of the Married Woman's Property Act, III of 1874 the particular case of a married woman, and does not give to a restraint upon anticipation any greater force than it had before the passing of the Act, but merely preserves to it the effect it had previously, leaving the Married Woman's Property Act of 1874 and the decisions upon it untouched. HIPPOLITE v. STUART I L R, 12 Calc, 523

2. and a 2—Condition against alienation—Inheritance—Decree of compromise—Bengal Civil Courts Act, 11 of 1871, s 21—In a suit for possession of certain shares in certain villages a compromise was effected between the plaintiffs and B, the defendant. The terms of the compromise were embodied in a deed the terms of which were (inter alia) as follows: 'The said B will hold possession as a proprietor generation by generation, without the power of transferring, in any shape. The following shares recorded in B's name shall not be transferred or sold in auction in payment of any debt payable by the said B and in the event of their being transferred or sold, such transfer will be invalid, and the plaintiffs will then be entitled to act aside that transfer and to obtain possession.' B obtained possession of the shares allotted to him by the compromise. Subsequently certain creditors of B attached the shares referred to in the deed in execution of a decree obtained against the heirs of B for money lent to B on a bond which he had executed while in possession of the shares and in which he made a simple mortgage of them. The representatives of the plaintiffs in the suit in which the compromise was made objected to the attachment of the shares by OLDFIELD J., that the deed of compromise passed an absolute estate to B and his heirs to which the law annexed a power of transfer and that in reference to s 10 of the Transfer of Property Act, the stipulation against alienation on B's part or against sale by auction in execution of decrees against him was void. Per MANMOON, J. That the rule contained in s 10 of the Transfer of Property Act was not binding upon the Court in this case, inasmuch as the question was one of succession or inheritance, to be governed by a 21 of the Bengal Civil Courts Act; that it was for those objects to the attachment to show that under the Hindu law the rights of B in the property ceased to exist at his death or that his estate devolved upon them free of his debts; that the Hindu law being silent on this subject, the principle of justice, equity and good conscience must be applied, to which so far as transfer was concerned, effect was given by s 10 of the Transfer of Property Act, that the restraint imposed by the deed of compromise upon B's powers of alienating the absolute estate which it

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

B. L. R., 377, referred to. *BHAIRO v. PARMESHRI DAYAL* *I. L. R.*, 7 All., 516

3. ————— and s. 12—*Transfers by act of parties—Assignments by operation of law.*—Ss. 10 and 12 of the Transfer of Property Act (IV of 1882) relate only to transfers by act of parties. IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY *I. L. R.*, 12 All., 192

ss. 10, 11.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS . *I. L. R.*, 8 All., 452

s. 14.

See PERPETUITIES, RULE AGAINST. [*I. L. R.*, 20 Bom., 511

s. 35.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . *I. L. R.*, 22 Mad., 289

s. 39.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.

[*I. L. R.*, 23 Bom., 342

I. L. R., 27 Calc., 194

I. L. R., 22 All., 326

s. 41.

See N.-W. P. RENT ACT, s. 7. [*I. L. R.*, 8 All., 409

————— *Ostensible ownership—Purchase bond fide for value from ostensible owner—Laches—Decision based upon ground not specifically pleaded.*—Where a Court sees that the rights of one of two innocent parties must be sacrificed, it is entitled to consider whether anything in the conduct of the party who comes into Court and seeks relief has debarred him from asserting his right. Where the plaintiff had for many years left another person in possession of a house, and the defendant had become at auction sale the *bona fide* purchaser for value of the house under a decree against such person as ostensible owner, the Court found that s. 41 of the Transfer of Property Act applied, and dismissed the plaintiff's suit. The Court is not precluded from basing its decision upon a ground not specifically pleaded by either of the parties. *THAKURI v. KUNDAN* *I. L. R.*, 17 All., 280

s. 43.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

[*I. L. R.*, 18 Mad., 492

See VENDOR AND PURCHASER—MISCELLANEOUS CASES.

[*I. L. R.*, 14 Mad., 459

s. 44.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARTNER *I. L. R.*, 13 Mad., 275

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

s. 45.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF. [4 C. W. N., 465

s. 48.

See N.-W. P. RENT ACT, s. 7. [*I. L. R.*, 8 All., 409

s. 51.

See DECREE—FORM OF DECREE—MORTGAGE *I. L. R.*, 8 All., 502

s. 52.

See FOREIGN COURT, JUDGMENT OF. [*I. L. R.*, 19 Mad., 257

See CASES UNDER LIS PENDENS.

————— *Registered and unregistered documents—Transfer of property "pendente lite"—Act III of 1877 (Registration Act), s. 50.*—*B* held a decree for the sale of property which had been mortgaged to him by an instrument which was not compulsorily registrable, and was not registered. *N* purchased the same property *pendente lite* by a registered deed of sale. Held that there was here no competition between a registered and an unregistered instrument to which s. 50 of the Registration Act could apply; and that *N*'s purchase was, by s. 52 of the Transfer of Property Act, subject to the decree passed in *B*'s favour. *BHAGWAN DAS v. NATHU SINGH* *I. L. R.*, 6 All., 444

s. 53.

See LIS PENDENS.

[*I. L. R.*, 13 All., 371

See REGISTRATION ACT, 1877, s. 50.

[*I. L. R.*, 8 All., 540

1. ————— *Stats. 13 Eliz., c. 5, and 27 Eliz., c. 4—Voluntary transfers as against creditors or subsequent transferees for consideration—Notice—Registration—Duty of mortgagee in searching for prior incumbrances—Post-nuptial settlement with power of appointment to wife—Deed of appointment in favour of children—Secrecy as evidence of fraud—Subsequent mortgage by wife and trustee of settlement without mention of deed of appointment.*—In 1870 the defendant *J* and her husband executed a post-nuptial settlement by which they assigned certain Municipal debentures to the defendant *E* (the brother of *J*) and one *G* "upon trust for *J* during her life and after her death as she should by deed or will appoint," and subsequently the trustees, in pursuance of a power given them by the settlement, sold the debentures and invested the proceeds in house property in Calcutta, such house and premises thereafter representing the trust property and being held by the trustees on the trusts of the settlement. On the 17th December 1878 *E* retired from the trust and made over his interest to the remaining trustee *G*, and on the same day *J* executed a deed of appointment in favour of her children representing to her solicitor that she did so to protect the property from her husband.

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The deed of appointment was witnessed by E, and was duly registered, but it was not mentioned in the deed which assigned the trust property to G, and no information of it was given to him, the deed remaining in J's custody and not being made over to G. In 1884 E retired from the trust, and E became sole trustee in his place. In March 1884 money was raised by J and E on mortgage of the trust property to G, but no mention of the deed of appointment was made in the mortgage deed. J's husband died in October 1884, but neither then, nor on the occasion

pressed his wife for money, or that he was leaving no property. In 1890 F and J mortgaged the house and premises to the plaintiffs, the mortgage deed (which was duly registered) reciting the settlement of 1870, and that "J has not made any irrevocable appointment of the said trust premises under the power of appointment given to her in the settlement," but making no mention of the deed of appointment executed by her in 1878. A deed of further charge was also executed by J and F in 1891 in favour of the plaintiffs also without any mention of the deed of appointment; this was also duly registered. Before execution of the mortgage of 1890 the plaintiffs' solicitors did not search the register of deeds further back than 1881, because they were dealing with persons who must have known of the exercise of the power of appointment, and who had given a covenant that no such exercise had been made, and because they then found that G, the former trustee had taken a similar security himself in 1881 and must have been satisfied that no such blot existed on the title. They had moreover, a letter from G's solicitors saying that they had searched the register up to 1884. J first set up the deed of appointment as a

therefore not binding on her; that the deed of appointment was made in consideration of her natural love and affection for her children; and that the plaintiffs had notice of it. On the facts the lower Court (SALJE J.) found that she had full and complete knowledge of the contents of the mortgage deeds and was bound by them, and that there was no fraud towards the plaintiffs on the part of J in suppressing the fact of the existence of the deed of appointment. Held by SALJE J., that according to the law which existed in India prior to the passing of the Transfer of Property Act, the deed of appointment was a voluntary conveyance and fraudulent within the meaning of the Stat. 27 Eliz. c. 4, and void as against the plaintiffs as subsequent trans-

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

fers for valuable consideration; the legal presumption of fraud which the Court was entitled to make on the cases decided on that statute rendering the question of notice or no notice immaterial. *Judah v. Adicol Kurum, 22 W. R., 60, Doe v. Oliver v. Manning, 9 East, 59, Doe v. Newman v. Russian, 17 Q. B., 721 and Godfrey v. Poole, L. R., 18 App. Cas., 497* referred to s. 53 of the Transfer of Property Act is not altered the law in that respect. The deed of appointment came within the definition of "transfer of property" given in that Act there being nothing in the Act to suggest that it was intended to confine its operation to transfers by contract. The words of a s. 53, "may be presumed to have been made with such intent as aforesaid" (i.e. with a fraudulent intent), should be construed in accordance with the cases decided under the Stat. 27 Eliz. c. 4. Even a summing that it was intended by s. 53 to exclude voluntary conveyances of which a subsequent transferee had notice from the presumption of fraud—Held on the facts that the plaintiffs had no notice of the deed of appointment. The doctrine of notice, if applied must be applied in accordance with and subject to the definition of notice given in the Act itself. There was no actual notice, and there was not such an "abstention from inquiry or search" on the part of the plaintiffs as to fix them with constructive notice. The words willful abstention from inquiry and search mean such abstention as would show want of bona fides on the part of the plaintiffs in respect of the particular transaction. *Agra Bank v. Barry, L. R. 71 Q. B., 135* referred to. Held also that the doctrine of registration amounting to notice, as laid down in the case of *Lakshmanadas Saraphand v. Desai, 1 L. R., 6 Bom., 169* had no application to the present case. Having regard to the terms of a s. 53 of the Transfer of Property Act that if applicable, can only apply for the purpose, either of rebutting the presumption of fraud or of preventing the presumption of fraud from arising. If the true meaning of that section be that the Court is to presume fraud only in accordance with the facts of each particular case, the facts of the present case were amply sufficient to raise the presumption as regards the deed of appointment. That deed therefore was fraudulent as against the plaintiffs and they were entitled to a declaration that it was void and inoperative as against them. Held on appeal (by LITHEBAM, C. J., and DORRIS and O'HNEALY, JJ.), that, looking to the unusual way in which the transaction as to the deed of appointment was carried out, and the secrecy given to it, the result of which was to enable J and J to raise money on the trust property by inducing persons to believe that the whole title lay in themselves alone, and on the other facts in the case, apart from the presumption which might be made under s. 53 of the Transfer of Property Act, where a transfer is made gratuitously for a grossly inadequate consideration viz., that it may be presumed to have been made to defraud or defeat creditors the decree of the Court below was correct. *JESHTA v. ALLIANCE BANK OF SIMLA, L. R., 23 Cal., 185*

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

2. ————— *Rights of a transferee in good faith and for consideration—Good faith. Meaning of—Effect of transfer made with the object to delay or defeat a creditor, the transferee not being aware of such an intention.*—Where a transferee for value is not aware of any intention on the part of the transferor to defeat or delay his creditors, but has knowledge only of an impending execution against the transferor, such knowledge of itself is not sufficient to vitiate the transfer, and does not make the transferee a transferee, otherwise than in good faith within the meaning of s. 53 of the Transfer of Property Act (IV of 1882). *Ramburun Singh v. Jankee Sahoo*, 22 W. R., 473, referred to. *ISHAN CHUNDRA DAS SARKAR v. BISHU SIRDAR* [I. L. R., 24 Calc., 825 1 C. W. N., 665]

3. ————— *Transfer in fraud of creditors—Good faith.*—When it is said that a deed is not executed in good faith, what is meant is that it was executed as a mere cloak, the real intention of the parties being that the ostensible grantor should retain the benefit to himself. *KAMASAMIA PILLAI v. ADINARAYANA PILLAI*

[I. L. R., 20 Mad., 465]

4. ————— *Debtor and creditor—Intent to delay and defeat creditors—Stat. 13 Eliz., c. 5.*—A mere preference by a debtor of one creditor to another, and *a fortiori* a mere *bond fide* security given to a creditor to the extent of his debt, is not within s. 53 of the Transfer of Property Act, 1882, as it is not within the English Statute of 13 Eliz., c. 5. But where a document given by way of security goes further and secures debts that are not due, the effect is, *quoad* such fictitious debts, to defeat or delay the creditors. Where a party intends to reply upon a document as not within s. 53 of the Transfer of Property Act because it merely creates a preference in favour of certain creditors over the rest, he must show strictly that the document is such and nothing more. *NARAYANA PATTAR v. VIRARAGHAVAN PATTAR* I. L. R., 23 Mad., 184

5. ————— *Assignment in fraud of creditors—Interest taken under will.*—B died in 1891, leaving a widow (defendant No. 1) and two sons P and D (defendants Nos. 4 and 5). By this will he gave his widow a life-interest in the rents and income of his property subject to the obligation of maintaining, educating, and bringing up the children. After his death the property, moveable and immoveable, was to be divided among his sons equally when D should attain the age of 25. He attained majority in October 1895. On the 13th June 1895 the plaintiffs obtained a decree for Rs. 976-10-10 against the widow and her son P. In execution of that decree they attached under an order, dated 2nd July 1895, the immoveable properties which had belonged to the testator's estate on the ground that both the widow and P had an interest in them. The defendants alleged (*inter alia*) that by an assignment dated the 20th February 1896 the widow had assigned and surrendered her life-interest to her son D, and that such interest was therefore not available to

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

satisfy the plaintiff's decree against her. As to P's interest, the defendants alleged that by a deed of settlement, dated the 9th February 1895, it was validly settled for the benefit of himself and his family, and that therefore he had no interest in him which could be attached under the order of the 2nd July 1895. That even independently of the attachment, her assignment to her own son D was invalid as against the plaintiffs under s. 53 of the Transfer of Property Act (IV of 1882). The object of that assignment was to protect the property from the creditors, and it was designed to defeat the plaintiff's decree and it was therefore fraudulent and void as against the plaintiffs. That the deed of settlement by P of the 9th February 1895 was void as against the plaintiffs under s. 53 of the Transfer of Property Act (IV of 1882). That the plaintiffs were entitled to realize the shares and interest both of the widow and of P so far as might be necessary to satisfy their decree of 13th June 1895. *NATHA KERRA v. DHUNBAINI* I. L. R., 23 Bom., 1

s. 54.

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—GENERALLY.

[I. L. R., 16 All., 344]

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ.

[I. L. R., 7 All., 482, 626]

See REGISTRATION ACT, 1877, s. 17.

[I. L. R., 10 All., 20.

I. L. R., 27 Calc., 468]

See REGISTRATION ACT, 1877, s. 18.

[I. L. R., 18 Mad., 454]

See REGISTRATION ACT, s. 48.

[I. L. R., 13 Mad., 324]

I. L. R., 27 Calc., 468]

See CASES UNDER VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

See VENDOR AND PURCHASER—INVALID SALES I. L. R., 18 Mad., 61

Optional registration.—*Per GARTH, C.J.*—S. 54 of the Transfer of Property Act virtually abolishes optional registration. *NARAIN CHUNDER CHUCKERBUTTY v. DATANAM ROY* [I. L. R., 8 Calc., 597; 10 C. L. R., 241]

s. 55.

See LIMITATION ACT, 1877, ART. 116.

[I. L. R., 21 Mad., 8]

See VENDOR AND PURCHASER—BREACH OF COVENANT I. L. R., 15 Mad., 56

[I. L. R., 25 Calc., 298]

2 C. W. N., 222

I. L. R., 21 Mad., 8]

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.

[I. L. R., 13 Mad., 158]

Meaning of words "material defects"—*Defect in title.*—The expression, "material

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

defect in the property" in s. 55 of the Transfer of Property Act (IV of 1882) includes a defect in the title to an estate *ESSA BRILLIMAY v. DATARAI PARMANANDAS* . I. L. R., 20 Bom., 522

— s 58

See DECREE—CONSTRUCTION OF DECREE
—MORTGAGE. I. L. R., 19 Mad., 249
[I. L. R., 23 I. A., 32]

See LIMITATION ACT, 1877, ART. 147
[I. L. R., 16 Mad., 64]

See LIMITATION ACT, 1877, ART. 148
[I. L. R., 14 Bom., 113]

See MORTGAGE—ACCOUNTS.
[I. L. R., 14 Bom., 113]

See — — — — —

L. L. R. v. L. L. R.

See MORTGAGE—SALE OF MORTGAGED
PROPERTY—RIGHTS OF MORTGAGEES
[I. L. R., 23 Cal., 33]

See PRE-EMPTION—CONSTRUCTION OF
WASIA UL-URZ
[I. L. R., 7 All., 258, 343]

See REGISTRATION ACT, s. 49
[I. L. R., 15 Mad., 253]

— s 59

See BENGAL TENANCY ACT, s. 12.
[3 C. W. N., 499]

See COMPROMISE—COMMISSION OF SUITS
UNDER CIVIL PROCEDURE CODE.
[I. L. R., 9 Mad., 103]

See CASES UNDER DEED—EXECUTION

See DEPOSIT OF LITER DEEDS
[I. L. R., 14 All., 338
I. L. R., 17 All., 253
I. L. R., 24 Cal., 348]

See FIDUCIARY ACT, 1872, s. 69
[I. L. R., 18 Mad., 29
I. L. R., 20 Cal., 228]

Oral agreement for loan—

Suit for ejectment by a tenant—A tenant in Malabar sued to eject a tenant, who proved by oral evidence that he had one year before suit paid to the plaintiff a sum of money as a renewal fee and the plaintiff agreed to demise the land to him on *karom* for a period of twelve years. Held that, although no instrument had been executed and registered, the plaintiff was not entitled to eject the defendant. *ITTAPPAN v. PARANGODAN NAYAR*

[I. L. R., 21 Mad., 291]

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

— s 60

See ATTACHMENT—SUBJECTS OF ATTACH-
MENT—EQUITY OF REDEMPTION.
[I. L. R., 21 Bom., 226]

See MALABAR LAW—MORTGAGE
[I. L. R., 16 Mad., 318]

See MORTGAGE—REDEMPTION—REDEMPTION
OF PORTION OF PROPERTY
[I. L. R., 17 All., 63
I. L. R., 21 Mad., 389
I. L. R., 20 All., 23
4 C. W. N., 507
I. L. R., 22 Mad., 209]

See MORTGAGE—REDEMPTION—REDEMPTION
OTHERWISE THAN ON EXPIRY OF
TERM . . . I. L. R., 18 Mad., 486
[I. L. R., 23 Mad., 33]

See MORTGAGE—REDEMPTION—RIGHT
OF REDEMPTION
[I. L. R., 23 All., 338]

Right of redemption, Extin-
guishment of—Breach of condition in mortgage
deed—Conditional sale—The breach of a condition
in a mortgage deed to the effect that on default of
payment on a certain date the mortgage shall be
deemed an absolute sale does not amount to an ex-

— ss. 61 and 62

See MORTGAGE—REDEMPTION—RIGHT OF
REDEMPTION I. L. R., 10 All., 205

— s 62

See MORTGAGE—REDEMPTION MORE OF
REDEMPTION AND LIABILITY TO FOR-
CLOSURE . . . I. L. R., 8 All., 403

See MORTGAGE—REDEMPTION—REDEMPTION
OTHERWISE THAN ON EXPIRY OF
TERM . . . I. L. R., 18 Mad., 486
[I. L. R., 23 Mad., 33]

— s 63

See MORTGAGE—ACCOUNTS
[I. L. R., 17 All., 282]

— s 65

See LANDLORD AND TENANT—TRANSFER
BY LEASE I. L. R., 10 Cal., 443

— and s 66—Mortgagor and mort-
gagee—Construction of mortgage—Sale of premises
at suit of a prior mortgagee—Right of a second
mortgagee to sue the mortgagor personally.—The
defendants, having already mortgaged certain land
to another, executed a hypothecation bond compris-
ing the same land in favour of the plaintiff to secure

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

a debt due by them to the plaintiff and covenanted therein to pay to him daily the proceeds of certain sales of firewood, of which the plaintiff was to credit part towards the secured debt. The defendants having failed to pay the amount due on the first mortgage, the first mortgagee obtained a decree and brought the land to sale. The plaintiff then brought a suit in the Small Cause Court to recover the amount due on footing of his hypothecation-bond. *Held* that the hypothecation-bond contained no personal covenant by the obligors, but that on the construction of ss. 65 and 68 of the Transfer of Property Act the obligors had committed default so as to entitle the obligee to sue them personally under the former section. **SINGJEE v. TIRUVENGADAM**

[I. L. R., 13 Mad., 192

— s. 67.

See LIMITATION ACT, 1877, ART. 122.

[I. L. R., 24 Calc., 473

See LIMITATION ACT, 1877, ART. 132.

[I. L. R., 20 Calc., 269

See LIMITATION ACT, 1877, ART. 147.

[I. L. R., 16 Mad., 64

See MORTGAGE—POWER OF SALE.

[I. L. R., 12 Mad., 109

I. L. R., 21 Bom., 267

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 9 All., 68

1. ———— *Right of suit—Suit for sale by usufructuary mortgagee.*—Under s. 67 (a) of the Transfer of Property Act (IV of 1882), a usufructuary mortgagee whose possession has not been disturbed cannot maintain a suit either for foreclosure or for sale on non-payment of the mortgage-money. *Choudhri Umrao Singh v. Collector of Moradabad, S. D. A., N. W., 1859, p. 13; Dulli v. Bahadur, 7 N. W., 55; Ganesh Koer v. Deedar Buksh, 5 N. W., 128; Venkatasami v. Subramanya, I. L. R., 11 Mad., 88; and Jhabbu Ram v. Girdhari Singh, I. L. R., 6 All., 289, referred to. UMDA v. UMRAO BEGAN* . . . I. L. R., 11 All., 367

2. ———— *Usufructuary mortgage—Remedy of mortgagee.*—A usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for sale of the mortgaged property. *Semble*—The construction placed on s. 67 (a) of the Transfer of Property Act, 1882, in *Venkatasami v. Subramanya, I. L. R., 11 Mad., 88*, that a usufructuary mortgagee can sue either for foreclosure, or for sale, but not for one or other in the alternative is wrong. *CHATHU v. KUNJAN*

[I. L. R., 12 Mad., 109

3. ———— and s. 58 (d)—*Usufructuary mortgage with a personal covenant—Suit by mortgagee for sale—Right of suit.*—In a suit for sale by a mortgagee it appeared that the mortgage comprised a covenant by the mortgagor for payment of the mortgage amount, but otherwise

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

answered the definition of a usufructuary mortgage contained in the Transfer of Property Act, s. 58 (d). *Held* that the mortgagee was not precluded by the Transfer of Property Act, s. 67, from bringing the property to sale under the mortgage. **RAMAYYA v. GURUVA** . . . I. L. R., 14 Mad., 232

4. ———— and s. 68—*Usufructuary mortgage—Dispossession of mortgagee—Suit for sale—Right of suit.*—The plaintiff, at the request of the mortgagors, paid off part of the debt due on a usufructuary mortgage to one of two mortgagees thereunder, and was placed by the mortgagors in possession under a usufructuary mortgage of that part of the mortgage premises which has been in the enjoyment of the mortgagee so paid off, who executed a release. The other mortgagee under the first mortgage obtained a decree for sale on the footing of that instrument, and the mortgaged premises were sold “subject to the establishment” of the plaintiff’s claim: the decree-holder purchased and afterwards assigned his rights to two of the present defendants who dispossessed the plaintiff. The plaintiff then sued the mortgagors and mortgagees and the defendants above referred to. *Held* the plaintiff was not entitled to a decree for sale. *Semble*—The plaintiff might have sued to have the sale, which had taken place at the suit of the first usufructuary mortgagee, declared to be invalid as against him. **SAMAYYA v. NAGALINGAM** . . . I. L. R., 15 Mad., 174

5. ———— and s. 68 (a)—*Mortgagee’s right to sue for mortgage-money and for sale—Usufructuary mortgage—Covenant to repay mortgage-money—Right of suit.*—The first defendant executed a usufructuary mortgage of certain land in favour of plaintiff’s deceased husband. It contained a covenant to pay the mortgage-money in Chittrai Kalavadi of the year 1883. This covenant was followed by these words: “If I fail to pay the mortgage amount in the said Kalavadi, then you shall receive the said mortgage amount in the Chittrai Kalavadi of whatever year I may pay it, deliver the said lands to my possession having cleared off the arrears of Government revenue, and also give back the bond.” The plaintiff sued to recover the money secured from the defendant personally and also by sale of the mortgaged property. *Held* by a Full Bench that the bond contained a covenant to pay, and that therefore the suit was maintainable. **SIVAKAMI AMMAL v. GOPALA SAVUNDRAM AYYAN**

[I. L. R., 17 Mad., 131

6. ———— and ss. 83, 84—*Suit by mortgagee instituted before payment into Court—Right of mortgagee to a decree.*—In a suit to recover money due on a mortgage, defendant paid the money into Court and a notice was issued to the mortgagee under s. 83 of the Transfer of Property Act. The mortgagee filed his suit before notice was served on him, and it was not proved that the mortgagee was aware of the fact of payment into Court when he filed his suit. *Held* that the plaintiff was not debarred by s. 67 of the Transfer of Property Act from obtaining a decree. **SITARAMAYYA v. VENKATRAMANNA** . . . I. L. R., 11 Mad., 371

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

7. — and ss 86, 89—*Usufructuary mortgage dated 20th April 1882 and on in 1881—Form of decree*—In a suit filed in 1884 on a usufructuary mortgage, dated 20th April 1882, a decree was passed for the payment of the mortgage-money, or in default for the sale of the mortgaged property. *Held* (Semble under the Transfer of Property Act) that the decree for sale was the right decree. **VRKATASANI v. SUBBA MAYNTA**. I. L. R., 11 Mad., 88

8. — and s 90—*Suit for money-decree on mortgage with personal covenant—Execution against mortgaged property—Sale of security in execution of decree*—A mortgage-deed contained a personal covenant to pay and a suit was brought on such personal liability. *Held* that the mortgagees were entitled to waive their right to proceed against the mortgaged property and to bring a suit only for a money decree but that they could not bring to sale the mortgaged property in execution of such decree without recourse to the provisions of s 67 of the Transfer of Property Act. **RAM KESUB DEB v. SOVATON PAL**. [3 C. W. N., 320

9. — *Decree for payment of money—Installments on decreed debt—Charge—Consent*—*act*—*forth in a schedule annexed to the decree stand charged with payment of the said installments, the said properties cannot be sold in execution of the decree, but a separate suit must be brought under s 67 of the Transfer of Property Act.* **ABHOTESWARY DASSER v. GOVIND SWARUP PANDAY**. [I. L. R., 23 Cal., 859

10. — and s 99—*Charge for maintenance created by a decree, how enforced—Civil Procedure Code (1-82), s 214 (c)—Separate suit*—Where a decree, after declaring the amount payable to the plaintiff in respect of future maintenance, and that it should be a charge on certain immovable property which formed a specific item in

property, on her executing a release of all her rights and interest in the general estate, *Held* that such a charge was properly enforced by a suit brought on the deed, and that it could not be given effect to by proceedings in execution. **ABHOTESWARY DASSER v. GOVIND SWARUP PANDAY**, I. L. R., 22 Cal., 859, followed. **Abhoteswary Dasser v. Lakshmi Devi**, I. L. R., 19 Cal., 154, distinguished. **MATANGINI DASSER v. CHOOCHETMOY DASSER**. [I. L. R., 23 Cal., 903

11. — *Usufructuary mortgage—Sudharma bond—Covenant to repay—Construction of bond—Suit for money and for sale—Form of decree*—In a sudharma mortgage bond it was stipulated, "having paid the principal money in the month

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

of Chait 1297 we shall take back the document and the land. In case we fail to repay the principal money on due date, the sudharma bond shall remain in force." *Held* that there was in this contract no agreement to repay the principal money and no such agreement was implied by the provisions as to taking back the document and the land, and therefore there was no right to a money-decree. *Held* that under s. 67 of the Transfer of Property Act (IV of 1882) an usufructuary mortgage cannot as such (i.e., unless there is anything in the contract which would imply the right) sue either for foreclosure or for sale. **Umda v. Umarao Begam**, I. L. R., 11 All., 567; **Chaitra v. Kunya**, I. L. R., 12 Mad., 109 and **Kamappa v. Gururao**, I. L. R., 14 Mad., 232, referred to. **Venkataram v. Subramanyam**, I. L. R., 11 Mad., 89, not followed. **Lechuzsuar Siron v. Dooker Mochan Jha**. I. L. R., 24 Cal., 677

12. — *Charge—Attachment without sale—Transfer of Property Act (IV of 1882), ss 99-100*—The plaintiff, a judgment-creditor, had in the High Court obtained a decree against the defendant, whereby it was ordered that the defendant should pay to the plaintiff a sum of Rs 63 123 and that the said sum should be a charge on certain immovable properties situated in the mofussil and specified in a schedule to the decree. In August 1894 the plaintiff obtained an order for transfer of the decree to a mofussil Court and sent a copy of the decree for execution thence. He obtained in that Court an order for attachment and sale of the property, but the order was reversed on appeal in May 1895 the High Court holding that the properties could not be sold in execution of the decree but that a separate suit must be brought under s 67 of the Transfer of Property Act. The plaintiff then applied to the

as to the plaintiff's right to attach the property as distinct from a sale or to sell it except after a suit under s 67 of the Transfer of Property Act. *Held* on appeal (reversing the decision of **SALE J.**) that an order for attachment only as distinct from a sale could be made. **Abhoteswary Dasser v. Govind Swarup Panday**, I. L. R., 22 Cal., 859, explained. **Chandra Nath Day v. Burroda Shantary Ghose**, I. L. R., 22 Cal., 813, referred to. **GOVIND SWARUP PANDAY v. ABHOTESWARY DASSER**. [I. L. R., 25 Cal., 203

See CHANDRA MOVI DASSER v. JETTY LAL MELLICK. 2 C. W. N., 33

s. 68.

See LIMITATION ACT, 1877, art 116 [I. L. R., 21 Mad., 242

See MORTGAGE—POSSESSION UNDER MORTGAGE. I. L. R., 6 All., 208

See RIGHT OF SUE—SALE IN EXECUTION OF DECREE. I. L. R., 23 Mad., 332

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

1. ———— *Mortgage of non-transferable property—Right to sue for mortgage-money.*—Where a decree was obtained by a landholder for cancellation of a deed whereby an occupancy-holding was mortgaged with possession, and the mortgagee consequently failed to obtain possession and brought a suit against the mortgagor to recover the mortgage-money, — *Held* that, inasmuch as the mortgagor must have known that he was mortgaging an estate not legally transferable, while the mortgagee might have believed that the estate was transferable, the act of the former was a default depriving the latter of his security within the meaning of s. 68 (b) of the Transfer of Property Act (IV of 1882), and the mortgagee was therefore entitled to succeed. *GANESH SINGH v. SUJHARI KUAR* . I. L. R., 10 All., 47

2. ———— *Sale of mortgaged premises under Land Acquisition Act—Personal suit by mortgagee.*—The sale of mortgaged premises under the Land Acquisition Act is not a destruction of the security within the meaning of s. 68 of the Transfer of Property Act, and does not enable the mortgagee to sue the mortgagor personally. *ARUMUGAM v. SIVAGNANA* I. L. R., 13 Mad., 321

3. ———— *Failure of mortgagor to give possession as stipulated—Personal suit for mortgage amount.*—In a suit against a mortgagor for the principal and interest due on a mortgage, it appeared that the payment of interest had fallen into arrears, and that the mortgage-deed provided that in such event the mortgagee should be entitled to possession of the mortgage-premises; the mortgagor falsely alleged that all the interest due had been tendered. *Held* that the mortgagee was entitled under s. 68 of the Transfer of Property Act to sue for the amount due on the mortgage. *SARAVANA v. CHINNANMAL* . I. L. R., 15 Mad., 65

4. ———— *Personal decree against mortgagor—Right of suit.*—Suit for a personal decree on a usufructuary mortgage which contained no express covenant to pay, but provided that, if the mortgagor repaid the secured debt before a certain date (now passed), he should be replaced in possession. The mortgaged premises had been attached in execution of a decree obtained by a third party against the mortgagor, and a claim preferred by the plaintiff having been erroneously rejected and the premises sold, he was dispossessed. The mortgagee accordingly brought his suit as above. *Held* that the plaintiff was not entitled to maintain the suit either under the terms of the mortgage or under Transfer of Property Act, s. 68. *GOPALASAMI v. ARUNACHELLA* [I. L. R., 15 Mad., 304

5. ———— *Right of suit—Usufructuary mortgage—Mortgagee kept out of possession by mortgagor's indirect conduct.*—Where a usufructuary mortgagee is unable to obtain possession of the mortgaged property owing to his mortgagor having executed a subsequent mortgage and placed the second mortgagee in possession, the first mortgagee may elect to sue at once for the money under s. 68 of

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

the Transfer of Property Act, instead of for possession of the land. *LINGA REDDI v. SAMA RAU* [I. L. R., 17 Mad., 469

6. ———— *Usufructuary mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Mortgagor holding on after expiry of lease—Right of suit.*—*H L* and others, mortgagees, under a usufructuary mortgage executed in their favour by one *G* (the usufruct being applicable in satisfaction of the interest of the debt), leased the mortgaged premises to the mortgagor. The lease was for a term certain with a covenant that the mortgagor might renew on compliance with certain conditions. The mortgagor, on the expiry of the lease, did not fulfil the conditions of the said covenant, but refused to give up possession of the mortgaged property to the mortgagees. *Held* that the mortgagees were entitled, either under cl. (b) (as held by *EDGE, C.J.*, and *TYRELL, J.*) or under cl. (c) (as held by *KNOX, BANERJI*, and *BURKITT, J.J.*) of s. 68 of Act IV of 1882, to a money-decree for the amount due under the mortgage. *Shitab Dei v. Ajudhia Prasad*, *Weekly Notes, All. (1887)*, p. 269, and *Jhabhu Ram v. Girdhari Singh*, I. L. R., 6 All., 298, distinguished. *HIRA LAL v. GHASITU* . I. L. R., 16 All., 318

7. ———— *Usufructuary mortgage—Dispossession of mortgagee by a trespasser—Suit for recovery of the mortgage-money.*—The words "any other person" in the concluding portion of cl. (c) of s. 68 of the Transfer of Property Act mean "any other person having a title." The disturbance of the mortgagee's possession by a trespasser will not confer upon the mortgagee a right to sue the mortgagor for the mortgage money. *Gopalasami v. Arunachella*, I. L. R., 15 Mad., 304, followed. *NAKOHEDI RAM v. RAM CHARITAR RAI* [I. L. R., 19 All., 191

8. ———— *Usufructuary mortgage—Possession not given—Suit for sale.*—A usufructuary mortgagee to whom the mortgagor fails to deliver or to secure possession of the property mortgaged is not entitled to claim in a suit for the money an order for the sale of such property. So held by the Full Bench in a case where the mortgage contained no covenant to pay. *ARUNACHALAM CHETTI v. AYYAYAYAM* . I. L. R., 21 Mad., 476

s. 69.

See MORTGAGE—POWER OF SALE.

[I. L. R., 11 Mad., 201

——— *Limits of town of Bombay—Land situate in district of Mahim.*—Land situate in the district of Mahim within the Island of Bombay, and within the local limits of the original jurisdiction of the High Court, is situate within the town of Bombay, in the sense in which that expression is used in s. 69 of the Transfer of Property Act. *TRIMBAK GANGADHAR RANADE v. BHAGWAN-DAS MULCHAND* . I. L. R., 23 Bom., 348

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

s. 72.

See MORTGAGE—ACCOUNTS

[I. L. R., 19 Mad., 327

I. L. R., 21 Mad., 32

I. L. R., 20 All., 401

S. 72 of the Transfer of Property Act only reproduces the rules of law which Courts of justice in India have uniformly adopted.

GIRDHAR LAL v BHOLA NATH

[I. L. R., 10 All., 811

s. 73

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.

[I. L. R., 15 Calc., 548

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE

[I. L. R., 20 Calc., 214

I. L. R., 21 Calc., 748

s. 74.

See DECREE—FORM OF DECREE—MORTGAGE

I. L. R., 18 All., 180

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEE

[I. L. R., 19 All., 527

Redemption of prior mortgages—Extinguishment of prior mortgage—Title

The mortgagee assigned his mortgage to defendant No. 1 on the 7th December 1882. On the 23rd December 1880 the mortgagors executed to the plaintiff a deed of usufructuary mortgage of the same land to secure Rs 1400; the deed stated that the money was borrowed with a view to discharge a

I have under-

I credit you

cash" The

on the 18th

session other

s. 75

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASER

[I. L. R., 20 Bom., 390

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEE

[I. L. R., 10 All., 827

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

s. 76.

See LANDLORD AND TENANT—TRANSFER BY TENANT

I. L. R., 10 Calc., 443

See MORTGAGE—ACCOUNTS

[I. L. R., 6 All., 303

I. L. R., 15 Mad., 230

See RIGHT OF SET-OFF—INDEBTED TO FRIOR-MENT OF PROPERTY.

[I. L. R., 10 All., 388

s. 78

See MORTGAGE—MARSHALLING

[I. L. R., 12 Mad., 424, 429

I. L. R., 13 Mad., 383

I. L. R., 15 Mad., 208

Transfer of Property Act (IV of 1882), ss 74-79—Gross negligence—How far registration amounts to notice—Registration Act, s 60—Where a mortgage prior in date duly investigated the title of the mortgagor but after the execution of the mortgage returned the title-deeds to the mortgagor according to the custom prevailing in the mofussil and subsequent thereto a mortgagee in Calcutta advanced money on one of those title-deeds without any actual notice of the prior mortgage, but without having duly investigated the mortgagor's title or searched the register—Held that the prior mortgagee was not within s. 78 of the Transfer of Property Act guilty of such gross negligence as would postpone his mortgage to the subsequent mortgagee, and the conduct of the subsequent mortgagee was not such as to create any predominant equity in his favour. The fact that there is in this country a universal system of registration is one of the circumstances to be taken into consideration in determining the question of gross negligence. Semble—The question whether registration is notice or not is a question of fact and as each case arises it should be determined whether the omission to search the register together with the other facts amounts to such gross negligence as to attract the consequence which results from notice. Tend v Pand, 2 Bro C C, 652; Evans v Rickell, 6 Ves, 174; Martinez v Cooper, 2 Puz, 194; Farrow v Rees, 5 Beav, 18; Hunt v Fimes 2 Ind F & J, 872; and Agre Bank v Barry L. R., 7 H of L at p 149, referred to. MONIVRA CHANDRA NATH v TROTECKHOO NATH BHAAT 2 C. W. N., 750

s. 80.

See RIGHT OF SET-OFF—SALE IN EXECUTION OF DECREE

I. L. R., 13 All., 548

s. 81.

See MORTGAGE—MARSHALLING

[I. L. R., 12 Mad., 255

I. L. R., 23 Calc., 780

2 C. W. N., 397

s. 82.

See MORTGAGE—MARSHALLING

[I. L. R., 23 All., 234

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

to that of persons who were entitled to it. *Held* that he was not entitled to claim the benefit of ss. 83 and 84 of the Transfer of Property Act, inasmuch as the persons really entitled to the money could not draw it. *MAT HARI AMMA v. KUNHI PATTUMMA*. I L R., 23 Mad., 510

— s. 84.

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE. I L R., 5 All., 502

— s. 85.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER. [I L R., 27 Calc., 724]

See CASES UNDER PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING

— s. 86.

See s. 2.

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE. I L R., 20 Calc., 279

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED

See LIMITATION ACT, 1877, ART. 135. [I L R., 12 Calc., 614]

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I L R., 13 Calc., 346]

Power of Court to make preliminary decree absolute when appeal is pending—Pendency of an appeal against a preliminary decree made under s. 80 of the Transfer of Property Act does not prevent the Court which passed the decree from making it absolute. MADAN MONTU VIKRAM v. RAM HIRI SAHU. 1 C. W. N., 197

— s. 87.

See APPEAL—DECREE. [I L R., 12 All., 61
I L R., 14 All., 520]

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE. I L R., 20 Calc., 279
[I L R., 25 Calc., 311]

See LIMITATION ACT, 1877, ART. 147. [I L R., 10 Mad., 64]

See LIMITATION ACT, 1877 ART. 173—PERIOD FROM WHICH LIMITATION RUNS—DECREE FOR SALE. [I L R., 20 All., 357]

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION. I L R., 18 Calc., 246
[I L R., 20 All., 358, 448
I L R., 19 Mad., 40
I L R., 19 All., 160
I L R., 23 Mad., 133
I L R., 27 Calc., 705]

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I L R., 13 Calc., 346]

— s. 88

See CERTIFICATE OF ADMINISTRATION—RIGHT TO ASSE OR EXECUTE DECREE WITHOUT CERTIFICATE. [I L R., 18 All., 259]

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES. I L R., 20 All., 397

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE. I L R., 20 Mad., 78
[I L R., 25 Calc., 311]

See HINDU LAW—ALIENATION—ALIENATION BY FATHER. I L R., 15 All., 75

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—CONTRACTS

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHT OF MORTGAGEES. [I L R., 18 All., 31]

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES. [I L R., 23 Mad., 286]

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY. [I L R., 23 Calc., 682]

— ss. 88 and 89

See CIVIL PROCEDURE CODE, 1852 s. 241—QUESTIONS IN EXECUTION OF DECREE. [I L R., 18 Calc., 139
I L R., 25 Calc., 133]

See CIVIL PROCEDURE CODE, 1852 s. 257A. [I L R., 19 All., 189]

See EXECUTION OF DECREE—PROCEEDINGS IN EXECUTION. I L R., 15 All., 278

See LIMITATION ACT, 1877, ART. 173—PERIOD FROM WHICH LIMITATION RUNS—DECREE FOR SALE. [I L R., 10 All., 520
I L R., 20 All., 304, 357]

— ss. 88, 89, 90

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

s. 89.

See CIVIL PROCEDURE CODE, 1882, s. 244—
QUESTION IN EXECUTION OF DECREE.

[I. L. R., 24 Calc., 473]

See DEKKAN AGRICULTURISTS ACT, s. 44.

[I. L. R., 23 Bom., 644]

See EXECUTION OF DECREE—APPLICATION
FOR EXECUTION AND POWERS OF COURT.

[I. L. R., 21 Calc., 818]

See INTEREST—OMISSION TO STIPULATE
FOR OR STIPULATED TIME HAS EXPIRED

—CONTRACTS . I. L. R., 17 All., 581

[I. L. R., 18 All., 316]

I. L. R., 19 All., 174

I. L. R., 24 Calc., 766

See LIMITATION ACT, 1877, ART. 122.

[I. L. R., 24 Calc., 473]

See LIMITATION ACT, 1877, ART. 178.

[I. L. R., 16 All., 23]

I. L. R., 22 Calc., 924

See LIMITATION ACT, 1877, ART. 179—LAW
APPLICABLE TO EXECUTION.

[I. L. R., 23 Bom., 644]

s. 90.

See INTEREST—OMISSION TO STIPULATE
FOR OR STIPULATED TIME HAS EXPIRED.

[I. L. R., 24 Calc., 766]

See LIMITATION ACT, 1877, ART. 178.

[I. L. R., 21 All., 453]

See LIMITATION ACT, 1877, ART. 179—

ORDER FOR PAYMENT AT SPECIFIED

DATES . I. L. R., 18 All., 371

1. *Decree for sale on a mortgage—Mortgaged property—Sale in execution of a decree held by a different mortgagee.*—In order to make the remedy provided by s. 90 of the Transfer of Property Act available, it is necessary that the mortgaged property should have been sold in execution of the decree held by the person applying for a further decree under s. 90. That section does not apply where the mortgaged property has been sold under a decree held by some other person. *Mahammad Akbar v. Munshiram, Weekly Notes, All., 1899, 208*, followed. *BADBI DAS v. INAYET KHAN* [I. L. R., 22 All., 404]

2. *and ss. 88 and 89—Decree for sale of mortgaged property—Decree not satisfied by sale—Recovery of balance due on mortgage.*—The decree contemplated by s. 90 of the Transfer of Property Act (IV of 1882) can be made in the suit in which the decree for sale was passed; and it is not necessary to institute a fresh suit to obtain such decree. *RAJ SINGH v. PAMANAND* [I. L. R., 11 All., 486]

ss. 92 and 93.

See EXECUTION OF DECREE—DECREE TO
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REVIEW . I. L. R., 15 Mad., 170

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

See CASES UNDER MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

See RES JUDICATA—CAUSE OF ACTION.

[I. L. R., 11 All., 386]

I. L. R., 15 Mad., 366

I. L. R., 17 Mad., 96

I. L. R., 19 All., 202

s. 93.

See EXECUTION OF DECREE—APPLICATION
FOR EXECUTION AND POWERS OF COURT.

[I. L. R., 23 Mad., 521]

See MORTGAGE—REDEMPTION—MODE
OF REDEMPTION AND LIABILITY TO FORE-
CLOSURE . I. L. R., 16 Mad., 214

Mortgage—Redemption—Decree for payment and redemption within six months—Application for execution of decree after six months had expired.—S. 93 of the Transfer of Property Act (IV of 1882), under which a mortgagor, who has obtained a decree for redemption, may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force. *CHENNAYA v. MALKAPA* . I. L. R., 20 Bom., 279

s. 95.

See LIMITATION ACT, 1877, ART. 148.

[I. L. R., 8 All., 295]

s. 98.

See MORTGAGE—FORM OF MORTGAGE.

[I. L. R., 12 All., 203]

I. L. R., 21 Mad., 1

s. 99.

See LIMITATION ACT, 1877, s. 8.

[I. L. R., 16 Mad., 436]

See LIMITATION ACT, 1877, ART. 179—

NATURE OF APPLICATION—IRREGULAR
AND DEFECTIVE APPLICATIONS.

[I. L. R., 12 All., 64]

See MORTGAGE—REDEMPTION—RIGHT OF
REDEMPTION . I. L. R., 22 Bom., 624,

[I. L. R., 23 Bom., 119]

I. L. R., 22 Mad., 347, 372

I. L. R., 23 Mad., 377

See RES JUDICATA—COMPETENT COURT—
GENERAL CASES.

[I. L. R., 16 Mad., 481]

See RES JUDICATA—COMPETENT COURT—
REVENUE COURTS.

[I. L. R., 18 All., 325]

1. *Hindu law—Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Sale of mortgaged property in execution of decree on a money-bond for interest due on the mortgage.*—The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

incurred by him for family purposes, and in 1831 he together with his brother executed to the mortgagee a money-lend for the interest then due on the mortgage. In 1834 the mortgagee brought a suit on the money bond, and, having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person. Held that the sale did not convey the interest of another undivided brother who was not a party to the

— *Money-decree "on the responsibility of" mortgaged premises—Attachment and sale of mortgaged premises—Purchase by mortgagee*—A usufructuary mortgagee left the mortgaged premises in the possession of the mortgagor under a rent agreement in 1878. The rent having expired, the mortgagor refused to pay the rent, and the mortgagee brought a suit for possession. Held that the sale was invalid under the Transfer of Property Act, s 39. *DURGAYYA v. AVANTHA*

[I. L. R., 14 Mad., 74]

See *VIGNESWARA v. BAPAYYA*

[I. L. R., 10 Mad., 430]

3. — *Usufructuary mortgage—Suit by usufructuary mortgagee for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs*—Certain usufructuary mortgages, not having been put in possession of the mortgaged property by the mortgagor, were not valid under the Transfer of Property Act, s 39.

property, reserving their rights and interests under the mortgage. Held that such a suit would not lie as being opposed to the intention of s 39 of the Transfer of Property Act, 1882. *Azim Ullah v. Jafar Khan & Co.*, I. L. R., 16 All., 415, and *Jadub Lal Shaw Chowdhry v. Madhub Lal Shaw Chowdhry*, I. L. R., 21 Cal., 34, referred to. *MAHABIR SINGH v. SAINA BANI*

[I. L. R., 17 All., 520]

4. — *Suit to set aside sale by mortgagee prior to coming into force of the Act—Construction of Statute*—In a suit brought to set aside a sale effected by a mortgagee prior to the date when Act IV of 1882 (Transfer of Property Act) came into force, Held that the Transfer of

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

Property Act (ss 2 and 39) has no retrospective effect, so as to invalidate an order of sale which constituted a legal relation between the defendants passed before that Act came into force. *NARAYANA v. SAMACHARLY*

I. L. R., 19 Mad., 382

5. — *Sale of mortgaged property in execution of money-decree—Sale by mortgagee of mortgaged property to satisfy a claim not arising under the mortgage*—A mortgagee cannot sell the mortgaged property in execution of an ordinary money-decree in satisfaction of a claim not arising under the mortgage. s 39 of the Transfer of Property Act limits the right of a decree-holder in such a case and provides that he shall not bring the mortgaged property to sale otherwise than by instituting a suit under s 67 of that Act. *Quare*—Whether the suit to be instituted under s 67 is a suit on the mortgage or is one on the charge created by attachment. *JADUB LALL SHAW CHOWDHRY v. MADHUB LALL SHAW CHOWDHRY*

[I. L. R., 21 Cal., 34]

6. — *Lease by mortgagee to mortgagor of mortgaged premises—Suit for recovery of rent—Attempt to sell mortgaged property in execution of money-decree for rent*—Held that a usufructuary mortgagee who had leased the mortgaged premises to his mortgagor could not, in execution of a simple money-decree for rent against the mortgagor, attach and sell the mortgaged premises but must bring a suit as provided by s 67 of Act IV of 1882. *AZIM ULLAH v. NARAYAN VISSA*

I. L. R., 10 All., 415

7. — *Sale of mortgaged property—Zur-i-peshgi mortgage—Purchase by the mortgagee*—s 39 of the Transfer of Property Act (IV of 1882) applies to zur-i-peshgi mortgages, and a purchase of the mortgaged property by the mortgagee in execution of a decree for rent due by the mortgagor under a karkana lease of the property was held to be not merely irregular, but absolutely void. *SREODAYA TEWARI v. RAMSARAY SINGH*

[I. L. R., 28 Cal., 164]

MOTI RAM TEWARI v. RAM LAKHAN SINGH

[3 C. W. N., 200]

8. — *Application for the attachment and sale of mortgaged property in execution of a decree obtained not in accordance with the Transfer of Property Act, though suit instituted after the passing of the Act*—A mortgagee obtained a decree on the 16th February 1883

1879 do obt mortg satisfaction of the debt. The judgment creditor, in

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

s. 89.

See CIVIL PROCEDURE CODE, 1882, s. 244—
QUESTION IN EXECUTION OF DECREE.

[I. L. R., 24 Calc., 473

See DEKKAN AGRICULTURISTS ACT, s. 44.

[I. L. R., 23 Bom., 644

See EXECUTION OF DECREE—APPLICATION
FOR EXECUTION AND POWERS OF COURT.

[I. L. R., 21 Calc., 818

See INTEREST—OMISSION TO STIPULATE
FOR OR STIPULATED TIME HAS EXPIRED
—CONTRACTS . I. L. R., 17 All., 581

[I. L. R., 18 All., 316

I. L. R., 19 All., 174

I. L. R., 24 Calc., 766

See LIMITATION ACT, 1877, ART. 122.

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[I. L. R., 16 All., 23

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See LIMITATION ACT, 1877, ART. 178.

[I. L. R., 21 All., 453

See LIMITATION ACT, 1877, ART. 179—
ORDER FOR PAYMENT AT SPECIFIED
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1. ————— Decree for sale on a mort-
gage—Mortgaged property—Sale in execution of
a decree held by a different mortgagee.—In order to
make the remedy provided by s. 90 of the Transfer
of Property Act available, it is necessary that the
mortgaged property should have been sold in exe-
cution of the decree held by the person applying for
a further decree under s. 90. That section does not
apply where the mortgaged property has been sold
under a decree held by some other person. *Maham-
mad Akbar v. Munshiram*, Weekly Notes, All.,
1899, 208, followed. *BADRI DAS v. INAYET KHAN*

[I. L. R., 22 All., 404

2. ————— and ss. 88 and 89—
Decree for sale of mortgaged property—Decree not
satisfied by sale—Recovery of balance due on
mortgage.—The decree contemplated by s. 90 of the
Transfer of Property Act (IV of 1882) can be made
in the suit in which the decree for sale was passed;
and it is not necessary to institute a fresh suit
to obtain such decree. *RAJ SINGH v. PAMANAND*

[I. L. R., 11 All., 486

ss. 92 and 93.

See EXECUTION OF DECREE—DECREE TO
BE EXECUTED AFTER APPEAL OR
REVIEW . I. L. R., 15 Mad., 170

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

See CASES UNDER MORTGAGE—REDEMP-
TION—RIGHT OF REDEMPTION.

See RES JUDICATA—CAUSE OF ACTION.

[I. L. R., 11 All., 386

I. L. R., 15 Mad., 366

I. L. R., 17 Mad., 96

I. L. R., 19 All., 202

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See EXECUTION OF DECREE—APPLICATION
FOR EXECUTION AND POWERS OF COURT.

[I. L. R., 23 Mad., 521

See MORTGAGE—REDEMPTION—MODE
OF REDEMPTION AND LIABILITY TO FORE-
CLOSURE . I. L. R., 16 Mad., 214

————— Mortgage—Redemption—
Decree for payment and redemption within six
months—Application for execution of decree after
six months had expired.—S. 93 of the Transfer
of Property Act (IV of 1882), under which a mort-
gagor, who has obtained a decree for redemption, may
show cause for extending the time allowed by the
decree for redemption, does not apply to decrees made
before the Act was put in force. *CHENNAYA v.
MALKAPA* . I. L. R., 20 Bom., 279

s. 95.

See LIMITATION ACT, 1877, ART. 148.

[I. L. R., 8 All., 295

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See MORTGAGE—FORM OF MORTGAGE.

[I. L. R., 12 All., 203

I. L. R., 21 Mad., 1

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See LIMITATION ACT, 1877, s. 8.

[I. L. R., 16 Mad., 436

See LIMITATION ACT, 1877, ART. 179—
NATURE OF APPLICATION—IRREGULAR
AND DEFECTIVE APPLICATIONS.

[I. L. R., 12 All., 64

See MORTGAGE—REDEMPTION—RIGHT OF
REDEMPTION . I. L. R., 22 Bom., 624.

[I. L. R., 23 Bom., 119

I. L. R., 22 Mad., 347, 372

I. L. R., 23 Mad., 377

See RES JUDICATA—COMPETENT COURT—
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[I. L. R., 16 Mad., 481

See RES JUDICATA—COMPETENT COURT—
REVENUE COURTS.

[I. L. R., 18 All., 325

1. ————— Hindu law—Personal de-
cree against managing member of joint family not
impleaded as such—Effect of sale in execution of
such decree—Sale of mortgaged property in execu-
tion of decree on a money-bond for interest due on
the mortgage.—The managing member of a joint
Hindu family executed in 1878 a mortgage on certain
lands, the property of the family, to secure a debt

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money bond for the interest then due on the mortgage. In 1882 the mortgagee brought a suit on the money bond, and, having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person. Held that the sale did not convey the interest of another undivided brother who was not a party to the decree. Held further *per* KANAY, J., that the sale in execution was invalid under the Transfer of Property Act, s. 90. *SATHUVAYYAN v. MEYTHASAM*

[I. L. R., 12 Mad., 325]

2. — — — Money decree "on the responsibility of" mortgaged premises—Attachment and sale of mortgaged premises—Purchase by mortgagee—A usufructuary mortgagee left the mortgaged premises in the possession of the mortgagor under a rent agreement in 1878. The rent having

been paid by the mortgagor, the mortgagee attached the mortgaged premises in execution, and having brought them to sale and purchased them himself, he sued for possession. Held that the sale was invalid under the Transfer of Property Act, s. 30. *DURGAIA v. ANANTIA*

[I. L. R., 14 Mad., 74]

See *VIGNESWARA v. BAPATTA*

[I. L. R., 16 Mad., 436]

3. — — — Usufructuary mortgage—Suit by usufructuary mortgagee for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs—Certain usufructuary mortgagees, not having been put in possession of the mortgaged property by the mortgagor, brought a suit for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs. Held that the suit was maintainable. *See* *per* KANAY, J.

4. — — — and s. 2—Suit to set aside sale by mortgagee prior to coming into force of the Act—Construction of Statute—In a suit brought to set aside a sale effected by a mortgagee prior to the date when Act IV of 1882—(Transfer of Property Act) came into force,—Held that the Transfer of

[I. L. R., 17 All., 620]

5. — — — and s. 2—Suit to set aside sale by mortgagee prior to coming into force of the Act—Construction of Statute—In a suit brought to set aside a sale effected by a mortgagee prior to the date when Act IV of 1882—(Transfer of Property Act) came into force,—Held that the Transfer of

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

Property Act (ss. 2 and 93) has no retrospective effect, so as to invalidate an order for sale which constituted a legal relation between the defendants passed before that Act came into force. *NANAYIA v. SAMACHARU*

I. L. R., 19 Mad., 382

6. — — — and s. 67—Sale of mortgaged property in execution of money-decree—Sale by mortgagee of mortgaged property to satisfy a claim not arising under the mortgage—A mortgagee cannot sell the mortgaged property in execution of an ordinary money-decree in satisfaction of a claim not arising under the mortgage. s. 93 of the Transfer of Property Act limits the right of a decree-holder in such a case, and provides that he shall not bring the mortgaged property to sale otherwise than by instituting a suit under s. 67 of that Act. *Quare*—Whether the suit to be instituted under s. 93 is a suit on the mortgage or is one on the charge created by attachment. *JADUB LALL SHAW CHOWDHRY v. MADHUB LALL SHAW CHOWDHRY*

[I. L. R., 21 Cal., 34]

7. — — — and s. 67—Usufructuary mortgage—Lease by mortgagee to mortgagor of mortgaged premises—Suit for recovery of rent—Attempt to sell mortgaged property in execution of money-decree for rent—Held that a usufructuary mortgagee who had leased the mortgaged premises to his mortgagor could not, in execution of a simple money-decree for rent against the mortgagor, attach and sell the mortgaged premises but must bring a suit as provided by s. 67 of Act IV of 1882. *AZIM ULLAH v. NAJM ULLAH*

I. L. R., 16 All., 415

8. — — — Sale of mortgaged property—Zar-i-peshgi mortgage—Purchase by the mortgagee—s. 93 of the Transfer of Property Act (IV of 1882) applies to zar-i-peshgi mortgages, and a purchase of the mortgaged property by the mortgagee in execution of a decree for rent due by the mortgagor under a katkana lease of the property was held to be not merely irregular, but absolutely void. *SHEODHRI TEWARI v. RAMSARAY INGH*

[I. L. R., 28 Cal., 164]

MOTI RAM TEWARI v. RAM LAKHAI SINGH

[3 C. W. N., 290]

9. — — — and s. 67—Application for the attachment and sale of mortgaged property in execution of a decree obtained not in accordance with the Transfer of Property Act, though suit instituted after the passing of the Act—A mortgagee obtained a decree on the 15th February 1883. In 1879 he mortgaged certain properties, and afterwards assigned over the decree, and the assignee, on the 15th August 1901, applied for the execution of the decree by attachment and sale of another of the mortgaged properties. Held, on the objection of the judgment-debtor, that s. 67 of the Transfer of Property Act was applicable

to the mortgage. *See* *per* KANAY, J.

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

to the case, and that the mortgaged property could not be sold, unless a suit under s. 67 of the Act be brought, and the procedure prescribed by the Transfer of Property Act followed. The property, however, could be attached, as there is nothing in s. 99 prohibiting such attachment. *CHUNDRA NATH DEX v. BURRADA SHOONDURY GHOSH*:

[I. L. R., 22 Calc., 813

9. ———— *Mortgage-decree—Transfer of Property Act (IV of 1882), Decree regarded as mortgage-decree under—Sale of mortgaged property in execution of decree.*—In a suit for recovery of mortgage-money by sale, brought after the Transfer of Property Act (IV of 1882) had come into force, the decree of the Court was: "That a decree be passed in favour of the plaintiffs in respect of Rs. 5,887-10-13, together with costs and interest at the rate of 6 per cent. per annum up to the date of realization, and that the mortgaged properties be made liable (*pro band kea jur*) for realization of the decretal money." *Held* that the decree was to be regarded as a mortgage-decree governed by the Transfer of Property Act, though not made in the form prescribed by that Act; and it followed that it was not open to the decree-holder to proceed against properties other than the mortgaged properties before exhausting the latter, and without obtaining an order under s. 90 of the said Act. *Jogemaya Dass v. Thackomoni Dass*, I. L. R., 24 Calc., 473, and *Fazil Howladar v. Krishna Bandhoo Roy*, I. L. R., 25 Calc., 550, referred to. *Chundra Nath Day v. Burrada Shoondury Ghose*, I. L. R., 22 Calc., 813, distinguished. *LAL BEHARY SINGH v. HABIBUR RAHMAN* . . . I. L. R., 28 Calc., 166

10. ———— and s. 67—*Landlord becoming mortgagee to tenant—Power to sell tenure in execution of rent-decree.*—When a landlord has taken a mortgage of the holding of a tenant, he is debarred by s. 99 of the Transfer of Property Act from bringing the tenure to sale in execution of his rent-decree otherwise than by instituting a suit under s. 67 of that Act. *RAMANI DAS v. SURENDRA NATH DUTT* . . . [I. C. W. N., 80

s. 100.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R., 14 All., 273

See LIMITATION ACT, 1877, ART. 148.

[I. L. R., 8 All., 295

See MORTGAGE—CONSTRUCTION.

[I. L. R., 13 All., 28

See MORTGAGE—FORM OF MORTGAGE.

[I. L. R., 9 All., 158

1. ———— *Charge on immoveable property—Mortgage—Construction of document—Limitation.*—Under s. 100 of the Transfer of Property Act, for a document to create a charge on immoveable property, it must be a document that creates such charge immediately on its execution, and not operates only as a charge at some future time, such as in the event of non-payment of the money

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

secured by it, the latter being the possibility of a charge ultimately arising on the land, and not "a charge" within the meaning of that section. *A lent B Rs. 99, and B executed a document on the 24th July 1881, whereby he agreed to repay the amount with interest in the month of Baisakh 1289 F.S. (April 1882), and further agreed that, if he did not pay the money as stipulated, he should sell his right to certain land and that A should take possession thereof, and that after A took possession of the land no interest should be paid by him, B, and that A should pay the rent of the landlord out of the profits of the land without any objection. A instituted a suit on the 3rd August 1885 to recover the Rs. 99. Held that the document did not amount to a mortgage, nor did it create a charge under s. 100 of the Transfer of Property Act, and that the suit was barred by limitation, three years being the period applicable. *MADHO MISSEER v. SIDH BENAIK UPADHYA alias BENA UPADHYA*.*

[I. L. R., 14 Calc., 687

2. ———— and s. 58—*Hypothecation bond, Suit on.*—The period of limitation for suits upon hypothecation-bonds which contain no power of sale, or effect no transfer of property, executed before the Transfer of Property Act came into operation, is twelve years under sch. II, art. 182, of the Limitation Act of 1877. *Aliba v. Nanu*, I. L. R., 9 Mad. 218, followed. *Per MUTTUSAMI AYYAR, J.*—"The transaction in suit appears to be of the kind described in s. 100 of the Transfer of Property Act, which defines how a charge is created;" but "it seems to me that the Transfer of Property Act does not invest all prior hypothecations with the rights and liabilities arising from simple mortgages, whether or not those transactions satisfy the requirements of the definition it contains of simple mortgages." *RANGASAMI v. MUTTUKUMARAPPA*

[I. L. R., 10 Mad., 509

3. ———— and s. 68—"Charge"—*Bengal Tenancy Act, s. 65.*—The provisions of s. 68 of the Transfer of Property Act are not amongst those made applicable by s. 100 of that Act to a person having a charge within the meaning of the latter section. *Semble*—The "charge" referred to in s. 65 of the Bengal Tenancy Act (VIII of 1885) is not such a "charge" as that defined by s. 100 of the Transfer of Property Act. *Lalit Mokun Roy v. Bindodai Dabee*, I. L. R., 14 Calc., 14, explained. *FOTICK CHUNDER DEX SINGAR v. FOLEY*

[I. L. R., 15 Calc., 492

s. 101.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 16 Mad., 94

I. L. R., 20 Mad., 274

s. 104, Rules framed under—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 25 Calc., 703

4 C. W. N., 474.

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

Rules made by High Court under

of the Code of Civil Procedure as regards sales held in execution of mortgage decrees. *Kedar Nath Rout v. Kali Charan Ram*, 1 I. L. R. 25 Cal. 703, explained. *DAKSHINA MOHAN ROY v. BABUMATI DEBI*, 4 C. W. N., 474

s. 105

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE

[I. L. R., 24 Cal., 440
2 C. W. N., 292]

s. 106

See EJECTMENT, RIGHT OF

[I. L. R., 20 Cal., 446]

See LANDLORD AND TENANT—EJECTMENT
—NOTICE TO QUIT

[I. L. R., 7 All., 596, 809
I. L. R., 17 All., 45
I. L. R., 20 Bom., 759
I. L. R., 22 Bom., 754
3 C. W. N., 383
4 C. W. N., 572, 780]

See ONUS OF PROOF—LANDLORD AND
TENANT. I. L. R., 13 Mad., 60

s. 107.

See REGISTRATION ACT, s. 17, cl. (d)
[I. L. R., 17 Mad., 275
I. L. R., 21 Mad., 109]

See REGISTRATION ACT, s. 18
[I. L. R., 24 Cal., 20]

Hdt. Lease of—General Clauses Act (I of 1869), s. 2, cl. 5—Immoveable property—Registration Act (III of 1877), s. 17—A suit was brought for rent of a hit on the basis of a verbal settlement for three years at an annual sum of Rs. 10. The defendants denied the settlement. The first Court found for the plaintiff, but on appeal an objection having been raised by the defendants that the verbal lease was illegal under the Transfer

s. 108

See LANDLORD AND TENANT—BUILDINGS
ON LAND, RIGHT TO REMOVE AND COM-
PENSATION FOR IMPROVEMENTS.

[I. L. R., 23 Cal., 820]

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued

See LANDLORD AND TENANT—DAMAGE TO
PREMISES LET. I. L. R., 17 Mad., 88
[I. L. R., 23 Bom., 15]

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE
[I. L. R., 24 Cal., 440]

See LANDLORD AND TENANT—TRANSFER
BY TENANT. I. L. R., 17 Mad., 293
[I. L. R., 23 Cal., 494
4 C. W. N., 574]

See ONUS OF PROOF—LANDLORD AND
TENANT. I. L. R., 13 Mad., 60

Transfer of Property Act—s. 118 of the Transfer of Property Act does not apply to transfers which took place before the passing of the Act. HANI NATH KARNAKAR v. RAJ CHANDRA KARNAKAR
[3 C. W. N., 122]

s. 111.

See LANDLORD AND TENANT—EJECTMENT
—NOTICE TO QUIT

[I. L. R., 7 All., 596, 809
I. L. R., 20 Bom., 759]

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE

[I. L. R., 20 Bom., 354
I. L. R., 24 Cal., 440]

See LEASE—CONSTRUCTION
[I. L. R., 17 All., 820]

s. 114.

See SMALL CAUSE COURT, PRESIDING
JUDGE—JURISDICTION—IMMOVEABLE
PROPERTY. I. L. R., 17 Mad., 218

s. 116.

See LANDLORD AND TENANT—EJECTMENT
—NOTICE TO QUIT

[I. L. R., 20 Bom., 759]

s. 117.

See BENGAL TENANCY ACT, SEC. 111, ART. 2
[I. L. R., 27 Cal., 205]

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE

[I. L. R., 20 Bom., 354]

See LEASE—CONSTRUCTION
[I. L. R., 17 Mad., 68]

s. 118

See PRE-EMPTION—CONSTRUCTION OF
WARRANT. I. L. R., 7 All., 623

See TRANSFER OF PROPERTY
[I. L. R., 11 Mad., 459]

Exchange—Partition—Some of the co-owners possessing an undivided share in several properties took by arrangement a specific property in lieu of their shares in all the properties. Held that this transaction was not an exchange.

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

within the meaning of s. 118 of the Transfer of Property Act, but the completed transaction amounted to a partition which is not required by law to be effected by an instrument in writing. *Firth v. Osborne, L. R., 3 Ch. D., 618*, referred to. *GYAN-NESSA v. MONARAKANNESSA I. L. R., 25 Calc., 210* [2 C. W. N., 91]

s. 119—*Exchange—Mutual covenants subsequently entered into to support title—Maxim "expressum facit cessare tacitum."*—The plaintiff and defendant effected an exchange of land; subsequently they executed to each other documents, of which that executed by the defendant recited the exchange and continued, "If any claim or dispute arises, I hereby bind myself to settle it." If I do not so get the dispute settled, I hereby bind myself to pay an amount not exceeding Rs. 4,014-8-6 at the rate of Rs. 4-0 per kuli of land for lands which go out of your possession. The plaintiff, alleging that he had been ousted from the land conveyed to him, now sued to recover the land which he had given in exchange. *Held* that the operation of the Transfer of Property Act, s. 119, was excluded by the express covenant in the document quoted above. *SUBRAMANIAM AYYAR v. SAMINATHA AYYAR*

[I. L. R., 21 Mad., 69]

ss. 122, 123.

See GIFT . I. L. R., 20 All., 392

s. 123.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION.

[I. L. R., 6 All., 634]

See GIFT . I. L. R., 19 Mad., 433

Hindu law—Gift—Delivery of possession—Immoveable and moveable property.—Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act. The first paragraph of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary. *Semle*—The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer. *DHARMODAS DAS v. NISTARINI DAS*

[I. L. R., 14 Calc., 446]

RAI RAMDAI v. BAI MONI

[I. L. R., 23 Bom., 234]

ss. 123 and 129.

See HINDU LAW—GIFT—REQUISITES FOR GIFT . I. L. R., 16 Calc., 446

[I. L. R., 20 Calc., 464
I. L. R., 23 Bom., 234]

s. 127.

See GIFT . I. L. R., 20 Mad., 147

TRANSFER OF PROPERTY ACT (IV OF 1882)—continued.

s. 131.

See LAND REGISTRATION ACT, s. 78.

[I. L. R., 23 Calc., 87]

1. *Transfer of debts—Assignment of mortgagee—Mortgagor, Liability of, to assignee of mortgagee when no notice of assignee given.*—An assignment is perfectly valid, though the notice referred to in s. 131 of the Transfer of Property Act has been given, though the title of the assignee as against third parties is not complete until such notice has been given, the object of such notice being the protection of the assignee. S. 131 of the Transfer of Property Act makes no alteration in the law as it obtained in England previous to the passing of that Act and as laid down in the cases cited in the note to *Ryall v. Rowles, 2 W. & T. L. C., 777*, the first portion of the section merely fixing the time when the section comes into operation and the latter providing for the protection of the debtor if he deals with the debt before that time. Where, therefore, an assignee of a mortgagee brought a suit on the mortgage against the mortgagor and the mortgagee and no notice of the assignment had been given to the mortgagor under s. 131 of the Transfer of Property Act,—*Held* that the Court was wrong in dismissing the suit merely on the ground that no notice was served, as after the suit was instituted the mortgagor became aware of the assignment, and the transfer accordingly came into operation on the date when he thus became aware of it. *LALA JUGDEO SAHAI v. BRIJ BEHARI LAL* . I. L. R., 12 Calc., 505

2. *Decree—Debt.*—A decree is not a "debt" within the meaning of that word as used in s. 131 of the Transfer of Property Act. A "debt" under that section means an actionable claim, and not a claim which has already passed into a decree. *AFZAL v. RAM KUMAR BHUDRA*

[I. L. R., 12 Calc., 610]

3. *Transfer of debt—No to debtor.*—*Held* that an assignment by endorsement of a registered bond hypothecating certain crops was not void by reason that notice thereof was not proved to have been given to the obligor, inasmuch as the effects of s. 131 of the Transfer of Property Act was merely to suspend the operation of the assignment up to the time when such notice was received; that in this case the assignment would come into operation against the obligor when he became aware of it by the institution of the suit; and that, if he had prior notice and sold the property to *bona fide* transferees for value without notice either of the charge created by the bond or the assignment, such transferees would be protected from liability. *Lala Jugdeo Sahai v. Brij Behari Lal, I. L. R., 12 Calc., 505*, referred to. *KALKA PRASAD v. CHANDAN SINGH* . I. L. R., 10 All., 20

4. and s. 135—*Notice—Assignment of actionable claim—Rights of transferee for value.*—A sued for principal and interest due on a mortgage assigned to him for value by the mortgagee. No notice of the assignment

TRANSFER OF PROPERTY ACT (IV

OF 1882)—continued.

judgment entered up against the insolvent, then clause (d) of s. 135 applied. In the matter of *RUNOHO KUNSHAT*. I. L. R., 21 Bom., 572

21.

Assignment of mortgage by mortgagee—Suit by assignee—Payment into Court by defendants (representatives of mortgagor) of price paid to the assignor (mortgagee) without admitting the mortgage or assignment—Interest

—Payment in grain—Damages.—In a suit by the assignee of a mortgage to recover the amount due on it, the defendants (who were representatives of the mortgagor), without admitting the mortgage, or that anything was due under it, paid into Court the amount which the plaintiff had paid for the assignment with interest and expenses, but said that they did not admit the assignment to the plaintiff or the assignor's right to the mortgage, but that they were willing that the amount should be paid to the plaintiffs if he proved that he was the person entitled to recover the mortgage-debt. *Held* that the plaintiff was entitled to recover the whole amount legally due on the mortgage, and that s. 135 of the Transfer of Property Act did not apply. Payment into Court under such circumstances was only a conditional tender, and such a conditional tender is not a payment under the section. *AMANDRAO BHABJI BAYE v. DURGABAI*

I. L. R., 22 Bom., 761

Actionable claim—Claim affirmed by a Court—Consideration for assignment

—Limitation—Construction of decree.—A, as guar-dian of the widow and legatee of the depositor, claimed a sum of money in the hands of a Bank, to which B asserted an adverse claim. Pending an application by A for a succession certificate, B sued the Bank and the widow for the money and A was joined as a defendant. A decree was passed in 1883, by which it was ordered that the Bank should pay the money to B on his giving security to pay it over to A on his obtaining the succession certificate. B furnished security and received the money in 1892. A meanwhile had obtained the succession certificate, and in 1894 he purchased the rights of the widow who had come of age. In the same year he sued B for the money. *Held* that the suit was not barred by limitation, and that the plaintiff was entitled to a decree, but that he could recover only the price actually paid by him with interest and the incidental expenses and costs, as the case was not within true construction of the decree of 1889, all that had been decided was who should hold the money pending the settlement of the rights of the rival claimants. *SURAYABARANA SASANI v. RAMAMURTI PANTULU*

I. L. R., 21 Mad., 253

Actionable claim—Person claiming the benefit of s. 135 not obliged to pay before judgment the amount paid by the assignee.

Held that a person who is entitled to claim the benefit of s. 135 of the Transfer of Property Act of 1882 does not lose the benefit of that section if he puts the assignee to proof of the price paid by him and waits until the amount of the price has been determined and declared by the Court. There is nothing in the

TRANSFER OF PROPERTY ACT (IV

OF 1882)—continued.

[2 C. W. N., 147

18. Actionable claim—Assign-

ment of simple mortgage before due date.—The term "actionable claim," as used in s. 135 of Act IV of 1882, means a claim in respect of which a cause of action has already matured, and which, subject to procedure, may be enforced by suit. *Held* that the assignment for value of a simple mortgage before the due date of the mortgage is not a sale of an actionable claim within the meaning of s. 135 of Act IV of 1882. *Rani v. Ajudhia Prasad*, I. L. R., 16 All., 315, referred to and explained. *SHIB LAIT v. AZMAT-ULLAH*

I. L. R., 18 All., 265

19. Mortgage—Actio

claim—Transfer of Property Act, s. 84—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidental expenses.—A debtor claiming the benefit of s. 135 of the Transfer of Property Act (IV of 1882) is discharged of his liability if he pays or offers to pay at any time before final judgment the amount actually paid with interest and incidental expenses. *Mullick v. Pulin Behari Mullick* *Chakrabarti, I. L. R., 21 Cal., 568, followed.* The amount of interest is governed by s. 84 of the Transfer of Property Act. *DEBENDRA NATH MULICK v. PULIN BEHARI MULICK*

I. L. R., 24 Cal., 763

20. and s. 139—Insolvent

Act (Stat. 11 & 12 Vict., c. 21), s. 86—Purchaser of scheduled debts—Right of purchaser to be paid full amount of such debt.—An insolvent, having filed his schedule in April 1881, obtained his personal discharge in September 1881, and on the same day judgment was entered up against him for the amount of his scheduled debts under s. 86 of the Insolvent Act (11 & 12 Vict., c. 21). The schedule contained the names of thirteen creditors. The insolvent, afterwards settled with four of them. The remaining nine, whose aggregate claims amounted to Rs. 1,804-7-0, sold their claims. Certain assets belonging to the insolvent's estate having subsequently come into the hands of the Official Assignee, the purchasers claimed to be paid the full amount of the scheduled debts which they had bought. It appeared that the debts in question were debts incurred on certain promissory notes passed by the insolvent. The insolvent contended that under s. 135 of the Transfer of Property Act (IV of 1882) the purchasers were only entitled to the amount which they had actually paid for the debts they had bought. *Held* that they were entitled to be paid the full amount of the scheduled debts. If the debts at the time of purchase were to be regarded as debts in respect of promissory notes, s. 139 of the Transfer of Property Act applied, and if the claim was under the

DIGEST OF CASES.

TRANSFER OF PROPERTY ACT (IV

transferred to plaintiff. The suit was dismissed on the ground that the plaintiff had lost his right to the claim within the meaning of s. 136 of the Transfer of Property Act, 1930. *Idid* that the action was not applicable.

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TRANSMISSION OF ROBERT V. ACT
AMENDMENT ACT (III OF 1885), s. 3.

NOTIFICATION

TO THE HONORABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES

AND

TO THE SENATORS

OF THE STATE OF TEXAS

IN

THE HOUSE OF REPRESENTATIVES

AT THE ANNUAL SESSION

OF THE LEGISLATURE

OF THE STATE OF TEXAS

AT THE CITY OF AUSTIN

ON

THE 11TH DAY OF FEBRUARY

1903

TRANSLATION

See COMPANIES L. T. R., 14 Bom., 686
L. T. R., 10 Bom., 667

TRANSPORTATION.

See DIRECTOR—TRANSPORTATION
Absence by reason of—
See IMITATION ACT, 1917, § 7
{ I. H. L. R., S. N., 25

TRANS SHIPMENT PERMIT.

See Det Customs Act, s 123
11 T. R., 4 Bom, 447

NOVELL

[illegible]

TREASURE TROVE.

L—HONG HONG A OF 1917—Holder
treasurer—Jing of holder of
Rights of holder, commander of
person, while being held in certain
The holder

TRANSFER OF PROPERTY ACT (V
OF 1882) - continued.

action to preclude the defendant from securing business from the defendant.

223 PIERCE CHAYD & COMPANY, LTD.
[11th Fl., 30 AVE., 327

25. Actionable claim—Sale of encroached interest in mortgaged property—

25. Date of actionable claim—Mortgagee by assignment—Assignee of prior item—The mortgage of a mortgaged obtained a decree for the principal and interest under the Act—A right to a portion of the appellant

[illegible]

36. "Judgment of a competent Court"—"actionable claim"—"not by assignment of a foreign judgment—Consideration smaller."

—The above is a list of the names of the persons who have been appointed to the various committees of the National Association of Manufacturers, and who have been authorized to represent the association at the various meetings of the National Association of Manufacturers, and who have been authorized to represent the association at the various meetings of the National Association of Manufacturers.

that the amount only with interest. On a private account for transferred to the High Court, *—* will be the plan.

THE UNIVERSITY OF CHICAGO
 LIBRARY
 540 EAST 57TH STREET
 CHICAGO, ILL. 60637

The plaintiff said the defendant to recover possession of them

TREASURE TROVE—continued.

not completed with by them, and on this ground the Judge held they were not entitled to it. The Government claimed the money on the ground that the provisions of the Regulation had not been complied with, and it was made over to the Collector, an appeal to the High Court being dismissed. **IN RE UJA CHAMAN BANARJEE**. 7 B. L. R., App. 3.

S. C. OMA CHURN BANERJEE v. COLLECTOR OF HOOGHLY. 15 W. R., 525.

2. — **s. 6 and s. 2—Valuable property—Ornament.**—The owner of the house where an ornament has been found concealed may, under s. 6, Regulation V of 1817, retain possession of it as a "valuable property" under s. 2, if no one else has substantiated any claim thereto. **PRAMI MOYEE I EWAN v. NOBIN CHUNDER CHOWDHURY**. [4 W. R., Mis., 8.

3. — **Mad. Reg. XI of 1832—Right to idols discovered—Right of owner of property—Right of trespasser—Omission to give notice to authorities.**—Certain idols and vessels of copper were discovered accidentally by one Shaik Mirza and his brother, while digging for stones, in a masonry building underneath the ground in a rather elevated part of the bed of the tank of Anandur which belongs to the zamindar of Shivananga. No intimation of the discovery was given by the Andars to any public authority, but the Subordinate Magistrate, being informed of it by the police, proceeded to the spot and recovered the idols on the third or fourth day after they were found. They were then sent by the Magistrate to the Court of the Principal Sudder Ameen of Alidura to be dealt with under the provisions of Regulation XI of 1832. Proclamation inviting claimants was made and petitions asking for possession of the idols were presented by three parties—first, by the Rani of Shivananga, on the ground that she was trustee of the devasthanams on her estate, on which the idols had been found; second, by the Sautikam of a temple in the village of Anandur and third, by the Andar. The Principal Sudder Ameen adjudged the idols to be the property of the Rani, and directed that they should be delivered to her. The Andar appealed to the Civil Court, which reversed the decision of the Principal Sudder Ameen, and directed delivery to the appellant. Against this order the Rani appealed to the High Court on the grounds—first, that Regulation XI of 1832 only applies to cases in which the ownership of the property is undiscovered, and that, in the present case, the Rani was presumably the owner of the property found; second, that a trespasser could not benefit by the finding. Held that the Rani had no title to what had been hidden in former times in the soil now belonging to her; that it had been found that these idols were hidden in a stone chamber specially appropriated to that purpose, and that she could not therefore claim a title as owner. As to the objection that the Andar, being a trespasser, could not benefit,—Held that it was unnecessary to consider this objection unless the Rani had some right or title to the treasure, the same as she had in the soil of the tank; that she had not such right, and therefore that the contention as to the right to the

TREATIES.

1. — **Tenure of territory in Bombay.**—The nature and results of Governor Aungler's Convention stated, and the origin of "pension and tax" in Bombay traced. Treaty of the 23rd June 1661 between Charles II and the King of Portugal considered. The treaty in 1664-65 by Mr. Humphry Cook with the Viceroy of Goa was entered into without authorization by the Crown of England or the Crown of Portugal, was not ratified by either, was expressly repudiated by the former, and never was of any force. *Doi d. de Siqueira v. Teixeira*, 2 *Mo. Dig.*, 250, observed upon. **NARAJI BIRAJI v. ROGERS**. 4 Bom., O. C., 1.

2. — **Cession of Bombay and Salsette to Portuguese.**—The treaty made between Sultan Bahadur of Gujarat and the King of Portugal (including Bombay and Salsette) to the Portuguese referred to. **SECRETARY OF STATE FOR INDIA v. VAKTSANAJI MEGHARAJI**. I. L. R., 19 Bom., 668.

4. — **Treasure Trove Act (VI of 1878)—Right of a talukdar in Gujarat to treasure trove—Rights of Government—Criminal Procedure Code (1882), ss. 523 and 524—Property placed at disposal of Government.**—A bag containing H 248-2-0 and a gold ring was found buried in a field under circumstances which created suspicion of the commission of an offence. The District Magistrate called for claimants to come forward under s. 523 of the Code of Criminal Procedure (Act X of 1882). Thereupon the plaintiff put in his claim, alleging that, as talukdar and owner of the soil in which the property was found, he was entitled to the property. His claim was rejected, and an order was passed under s. 524 of the Code placing the property at the disposal of Government. The talukdar then sued the Secretary of State for India in Council to recover the property in dispute. The Joint Judge awarded the claim. *Held*, reversing the decree of the lower Court, that, in the absence of any evidence to prove the talukdar's right to treasure trove either by a grant or prescription, the property belonged to Government, the Indian Treasure Trove Act (VI of 1878) being inapplicable, as no notice was given by the Andar, nor were any proceedings taken under it. **SECRETARY OF STATE FOR INDIA v. VAKTSANAJI MEGHARAJI**. I. L. R., 19 Bom., 668.

5 Bom., O. C., 23.

See LOPEZ v. LOPEZ

TREES—concluded.

time be entitled to impose and subject also to all other lawful incidents attaching to a holding of that description. The rights of a tree-potahdar and the nature of the revenue levied on such potahdars considered. *THIRUV PANDITHAN v. SECRETARY OF STATE FOR INDIA* . . . I. L. R., 21 Mad., 433

TRESPASS.

Col. 9228
1. GENERAL CASES 9230
2. HOUSE-TRESPASS 9230

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2. I. L. R., 21 Cal., 528
See CIVIL PROCEDURE CODE, 1882, s. 244
—QUESTIONS IN EXECUTION OF DECREE.
[3 B. L. R., A. C., 418
12 B. L. R., 208 note
See CIVIL PROCEDURE CODE, 1882, s. 424.
I. L. R., 24 Cal., 584
See CONVERSION I. L. R., 22 Mad., 197
See DAMAGES—SUITS FOR DAMAGES—
TORTS . . . 8 Bom., A. C., 177
[7 N. W., 47
25 W. R., 548
I. L. R., 13 All., 98
I. L. R., 10 All., 198
See DEBTOR AND CREDITOR.
[2 Ind. Jur., O. S., 7
See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.
[3 B. L. R., A. C., 418
12 B. L. R., 208 note
See INTUITION—UNDER CIVIL PROCEDURE CODE . I. L. R., 22 All., 449
See MADRAS FOREST ACT, s. 21.
I. L. R., 12 Mad., 226
See MADRAS POLICE ACT, s. 21.
I. L. R., 17 Mad., 37
See MASTER AND SERVANT.
[2 B. L. R., A. C., 227
2 B. L. R., O. C., 140
See MISJOINDER OF PARTIES.
I. L. R., 19 Mad., 335
See RAILWAYS ACT, 1871, s. 2.
I. L. R., 1 Bom., 25
See RECORDER OF MORTGAGES.
[6 W. R., Civ. Ref., 4
See RECORDER OF RANGHOON.
I. L. R., 20 Cal., 689
See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
I. L. R., 19 All., 153
I. L. R., 6 Mad., 245
[10 C. L. R., 278
W. R., 1864, Cr., 21

TRESPASS—continued.

See SPECIAL OR SECOND APPEAL—SUITS CAUSING COURT SUITS—TRESPASS.
See WRONGFUL DISTRAINT.
[5 W. R., Act X, 67
3 B. L. R., A. C., 261
by cattle.
See CATTLE TRESPASS, AND CATTLE TRESPASS ACTS.
See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 2 B. L. R., A. C., 45
[9 B. L. R., Ap., 36
on burial ground.
See RELIGION, OFFENCES RELATING TO.
[I. L. R., 10 Mad., 126
I. L. R., 18 All., 395

1. GENERAL CASES.

1 —Landlord and tenant—Damage to reversionary interests—Right of landlord to sue for damage—English law, Non-applicability of—Many of the tenures in India are in the nature of a partnership, in which he to whom the land belongs participates with the cultivator in the crop. Therefore the law of England, that a landlord who has parted with this possession to a tenant cannot sue in trespass for damage to the property, unless the wrongful act complained of imports a damage to the reversionary interests, does not apply to landlords in India. *VENKATACHALAM CHETTI v. ANDAPPAI APPALAI* . . . I. L. R., 2 Mad., 232

2 —Wrongful distraint of crops—Distraint without notice—Penal Code, s. 79—Resistance to wrongful distraint—A zamindar was held to be justified in exercising his right of private distraint of crops, if he had served the defaulters with written notices under Act X of 1859, s. 116, and, in such a case, raiyats, who knowingly resisted the distraint, were held to be not protected by the Penal Code, s. 79. But if the zamindar's people enter upon crops with intention of distraining without notice, the raiyat-owners are justified in considering such action as trespass. *QUEEN v. KANAI SHANU* [23 W. R., Cr., 40]

3 —Land taken by Government without formality prescribed by Beng. Reg. I of 1825—Right of owner to maintain suit against Government for rent—Lands were occupied by the Government for the purpose of making an embankment without the observance of the formality required by Regulation I of 1825. Held that the owner of the land was entitled to maintain a suit against Government for the rent of the land during the time he was kept out of possession. *JOGAYAN BOSA v. COLLECTOR OF 24-PERGUNNAS* [Marsh., 56
COLLECTOR OF 24-PERGUNNAS v. JOGAYAN BOSA . . . W. R., 18:1 May, 122
4. —Suit to prevent trespass—Suit to close doors—Cause of action—Possibility

of injury.—No suit can lie to close doors opened by a person in his own wall on the ground of a possible trespass. It will only be when the opening of the door is in itself such an irreparable injury that the plaintiff would not be adequately compensated by money damages. *Shore v. A. C. 411*
 5. *Sale under defective notice—Decree of sale for arrears of rent—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

6. *Sale under defective notice—Decree of sale for arrears of rent—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

7. *Trespass on burial ground—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

8. *Liability for trespass by defendants not actually committing it—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

9. *Breaking open chest in house by inmate of house—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

10. *Breaking open door in house by inmate of house—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

11. *Breaking open door in house by inmate of house—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

12. *Breaking open door in house by inmate of house—*
 A, a zamindar, sold the right of B, his partner, for arrears of rent under Regulation 1711 of 1819. This sale was subsequently set aside as the sale of B for irregularity. A then sued B for the arrears under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass under Act V of 1859, and B pleaded limitation. *Held* that A was not guilty of a trespass.

TRSPASS—concluded.

2. HOUSE-TRSPASS—concluded.

—Excommunication from caste *per se* does not deprive a Hindu wife of her right of joint enjoyment of her husband's house, so as to make her a trespasser if she enters the house to claim maintenance. *Queen v. Marimuttu*. I. L. R., 4 Mad., 243.

14. Entering lock-up with intent to convey food to prisoner—*Penal Code*, s. 442.—Where a person entered into a havali with intent to convey or attempt to convey food to a prisoner under trial, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal Code. *Empress v. Latat*.

[I. L. R., 2 All., 301

TRSPASSER.

See CO-SHARERS—ENJOYMENT OF JOINT

PROPERTY—EJECTION ON BUILDINGS.

[I. L. R., 18 All., 361

See MRSSE PROPTS—RIGHT TO, AND

LIABILITY FOR I. L. R., 19 Mad., 145

See POSSESSION—NATURE OF POSSESSION.

[I. L. R., 15 Bom., 238

See TITLE—EVIDENCE AND PROOF OF TITLE.

[I. L. R., 19 Bom., 828

Dispossession by—

See JURISDICTION OF CIVIL COURT—RENT

AND REVENUE SUITS, N. W. P.

[7 N. W., 228, 257, 259, 318

I. L. R., 19 All., 34

See TRANSFER OF PROPERTY ACT, s. 63.

[I. L. R., 19 All., 191

Effect of settlement with—

See SERVITOR TENURE.

[I. L. R., 18 Bom., 22

Suit against—

See DECREE—FORM OF DECREE—TRANS-

PASSER. 4 C. W. N., 105

See JURISDICTION OF CIVIL COURT—RENT

AND REVENUE SUITS, N. W. P.

[I. L. R., 1 All., 448

I. L. R., 16 All., 325

I. L. R., 19 All., 452

I. L. R., 20 All., 520

See LANDLORD AND TENANT—REPLETMENT

—GENERALLY. I. L. R., 19 Bom., 138

See MRSSE PROPTS—MODE OF ASSESS-

MENT AND CALCULATION.

[I. L. R., 1 All., 518

I. L. R., 20 All., 208

See ONUS OF PROOF—REPLETMENT.

[I. L. R., 19 Bom., 803

See RIGHT OF SUIT—CHARITIES AND

TRUSTS. I. L. R., 18 Bom., 721

Suit by—

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R., 15 Bom., 685

TRSPASSER—concluded.

See WRONGFUL POSSESSION.

[I. L. R., 4 Cal., 566

"TRIAL," COMMENT ON—

See WITNESS—CRIMINAL CASES—SUM-

MONYING WITNESSES.

[I. L. R., 25 Cal., 863

TROVER.

See HUNDI—LIABILITY ON.

[I. L. R., 18 Bom., 570

See SMALL CAUSE COURT, PRESIDENCY

TOWNS—JURISDICTION—TROVER.

[I. L. R., 12 Bom., 573

Suit in—

See HUSBAND AND WIFE.

[I. L. R., 1 Cal., 285

1. Right of stoppage in transitu

—Contract for goods free on board—Insolvency.

Goods contracted to be sold and delivered "free on

board," to be paid for by cash or bills at the option of

the purchasers, were delivered on board, and receipts

taken from the mate by the higherman employed by

the sellers, who handed the same over to them. The

sellers apprised the purchasers of the delivery, who

elected to pay for the goods by a bill, which, the

sellers having drawn, was duly accepted by the pur-

chasers. The sellers retained the mate's receipts for

the goods, but the master signed the bill of lading in

the purchasers' names, who, while the bill they ac-

cepted was running, became insolvent. In such

circumstances, held by the Privy Council (reversing the

decision of the Supreme Court at Bombay) that trover

would not lie for the goods, for that on their delivery

on board the vessel they were no longer in *transitu* so

as to be stopped by the sellers; and that the retention

of the receipts by the sellers was immaterial, as after

their election to be paid by a bill the receipts of the

mate were not essential to the transaction between the

seller and purchaser. *BAXTER COWASER v. THOMP-*

SON. 3 MOORE'S I. A., 422

2. Conversion—Assignment of

goods in certain warehouses on advances—Seizure

of goods—Advance and assignment not simulta-

neous—Incomplete assignment.—A bill of sale and

assignment of goods described as being in certain

warehouses belonging to A was given by him for the

loan of a sum expressed to have been paid on the

day of the date thereof. Upon an action of

trover brought against the assignee of A, who

had seized the goods, it appeared in evidence that

a portion only of the goods was in the warehouse

specified at the date of the sale, and that no part

of the loan was paid on that day, the same being

discharged by instalments a few days afterwards;

whereupon the Judges of the Supreme Court held

that there had been no valid transfer, and conse-

quently no conversion, and gave an interlocutory

judgment in accordance with such view. *Held* by

the Judicial Committee on appeal from that decision,

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See HINDS LAW-ARTITION-AGREE
MEXIS NOT TO PARTITION ETC.
I L R, 8 Cal, 108
I L R 12 Med, -87

SEE CASES UNDER THIRD LAW—WITH
CONSTRUCTION OF WILLS PERMITTED
THIS ISSUE BELONGS TO A CLASS AND
RECOGNIZED

See Jurisdiction--Suit for Land--
Trusts

See CASES UNDER LIMITATION ACT, 187,
310

ART 113) I T R, 11 CALIF. 323
See Cases under MONDAY LAW-
EDMUND

See HRS JUDICIALS—STOPPED BY JUDGE
NEXT
I. T. H. 10 AM, 1977
U. H. 10 AM, 1977

See Cases under Right of Suit—(Name)
TIES AND TIEBES

ONE WILL—CORRECTION
H. L. B., 4 Cals, 420
I. L. B., 9 Mds, 325
1 Ind. 197. 8.88

— Declaration of—
I. L. R., 16 Mad., 424

— Doed of—
[L. L. H., 12 Mad., 80
see STAMP ACT 18-9 1891 1 Art 30.

See Limitation Act 1875 s 10
[T. L. R., 20 Bom., 511
See Stamp Act 18 9 s 11 Art 4]

(L. T. R. 20 Bom., 210
— Disposal of

2025 RELEASE UNDER E.O. 14176

See Bill of LCAVATOR.
[L. B. R., 3 Calif., 174]

See DENTON AND CREDITORS.
[1] Moore & A, 317
3 Agre, 101, 321
B Ham - A C 316

1 Bom, ~33
1 L.R., 7 Bom, 101
1 L.R., 26 Calc, 643

I. L. R. 10 Boms, 1
I. L. R. 10 Boms, 12
I. L. R. 10 Boms, 101

— for specific purpose.

(U) JC L R, 370
I L R, 8 Mtd, 403
I L R, 11 Dom, 470

13 11 1924

and from an order refusing a new trial that the
decision was not justified by the evidence, and must
be reversed and a new trial granted. **MORTIMER**
LEAL & DONDA
4 Moore's I. A., 383

3 ————— Suit to recover notes lost by
Gambling—Act of 1818—Illegal consider-
ation—Bond holder for same—Trust for spe-

[illegible]

...place which he would procure at a more reasonable rate than in the Calcutta market if the

money were given him to purchase it. If the Com
pany's part was not procurable the notes were to be
returned to the plaintiff. It did not go to the place

at a time to purchase the company's paper but in return the reader is asked to send in a card and others he went into a store and for some time he was not able to find the paper.

10

most favorable market price for the bulk or sale of the profit *Held* it is plain

אשר נשבע ה' לאבותינו לאמר לא אעשה כן עמכם ואת ארצכם לא אעזוב לאמר לא אעשה כן עמכם ואת ארצכם לא אעזוב

RECEIVED BY UNIT OF THE COMPTON
O B I R, 681

TRUST
16 DEPT-LOCATION
L. F. R., 20 Rom, 310

See Psychological Test
[3 Ind. Jur., O. S., 12]

OF THE
4th and 5th

ATTORNEY AT LAW - EMBROIDERED
[T. L. H. & M. Ltd., 200
44 Hable Law - Embroidery - CNYA

11 Ind Jut, N. B. 11
14 B L. R. A. 173
1. L. R. O. 160

I. L. H. 1 Calif 68
 I. L. H. 13 Bond. - 17
 I. L. H. 10 All 18

1 701

TRUST—continued.

See JURISDICTION—SUITS FOR LAND—

See STAMP ACT, 1879, SCH. I, ART. 50.
[L. L. R., 15 Mad., 386]

See LIMITATION ACT, 1877. ART. 1834 (1871, ART. 134). I. I. R., I Bom., 269

See WITL—CONSTRUCTION.

L. R., 9 L. A., 70
I. L. R., 15 Mad., 448

ONTS OF PROOF—TRUST, REVOCATION . . . 10 B. L. R., 19
[14 Moore's I. A., 289

Suit relating to—

See SMALL CAUSE COURT, MORRISVILLE—JURISDICTION—TRUSTS.

1. _____ Creation of trust—Owner of

of it, he must either expressly declare himself in a transmission or must use language which, taken in connection

in the character of a trustee. From the single circumstance that an account has been opened by a

trust, in favour of his son, of the sums appearing in the account. ASHABAI v. TYER HARI RAMINTULU, L. T. R., 9 Bom., 111

that where a trust has been once perfectly created

FIRST—continued.

brother of T C, and himself, the sum of ₹7,273-1-10 alleged to have been owing by T C to L. In a suit by the son of T C for an account the Assistant Registrar found (*inter alia*) in his report that ₹1,975 had been paid to S by the defendant, and that the balance ₹5,298-1 had been taken over by the defendant by arrangement with S (the first payment being time barred). *Held* that a good trust in favour of S for the whole debt due to her was created in respect of the moneys which reached the defendant's hands applicable under the terms of the mandate to him for the payment of her claim; that no question arose as to limitation; and that it was unnecessary to consider whether the defendant, if acting as an executor *de son tort*, had power to pay it though barred. *Held* also that the trust was not in the nature of a testamentary disposition, though it was created in anticipation of death, and could not after the death of T C be recalled by his representatives. *Peckham v. Taylor*, 31 *Beav*, 250, followed. *Quare*—Whether as to the application of the surplus after payment of the specified debts the defendant was in the position of an executor *de son tort*, and that practically it may in some cases be difficult to avoid the application to Hindus of the principles upon which executorship *de son tort* rests. *Jogender Narain Deb Roykut v. Temple*, 2 *Ind. Jur.*, N. S., 234, referred to. *Semble*—That even upon the findings of the lower Court the order as to costs would have to be altered materially in favour of the defendant. *SUDASOOK KOOTAB v. RANCHUNDER*
[I. L. R., 17 Cal., 620]

6. *Trust created for specific purpose*—*Surplus after performance of trust*—Where a trust had been created for specific purposes, *viz.*, the performance of religious and other duties, and the trustee had duly appointed another trustee in his place, the latter being entitled to hold the trust estate.—*Held* that a decree having been made against the trustee personally, the corpus of the trust estate could not be sold to satisfy the claim of the judgment-creditor, nor could any specific portion of the corpus of the estate be taken out of the hands of the trustee on the ground that there was, or might be, a margin of profit coming to him personally after the performance of the trusts. *Held* also that in a suit in which all the parties interested were not before the Court there could be no decision as to the extent of the trusts nor as to whether any surplus profits of the trust estate would, or would not, after the performance of the trusts, belong to the trustee personally. *BISHEN CHAND BASAWAT v. NADIR HOSSAIN*
[I. L. R., 15 Cal., 329
I. L. R., 15 I. A., 1]

7. *Improvements of estate—Rights of tenant for life and remainderman as to sums expended*—A testator conveyed his property which consisted of extensive coffee estates to trustees upon trust as to part thereof for certain persons for life and then upon trust for their children absolutely. A suit having been filed for the administration of the trusts of the will, a receiver was appointed. On the application of

FIRST—continued.

the receiver, and with the consent of all parties, the Court sanctioned the extension of the profits of the estate, done by raising a loan on pledge of the profits of the estate, out of which, when realized, the loan was paid off. By the will, the trustees were empowered to raise money for the purpose of managing the estate at their absolute discretion, either by using the profits or by pledging or selling the corpus. The tenants for life claimed that the loan might be declared a charge on the estate. *Held* that the extension was within the powers of the trustees, but that, as between the life-tenants and the remaindermen, the former were entitled to have the sums expended on the improvements charged on the corpus, they keeping down the interest. *OCHTERLOFF v. OCHTERLOFF*
[I. L. R., 11 Mad., 360]

8. *Application by trustees to raise money by mortgage of trust property—Sanction of Court*—A testator by his will devised property in Bombay to trustees on certain religious and charitable trusts. The income of the property was more than was required for the purposes of the trust, and the trustees had a surplus of ₹19,000 in their hands. They were obliged to pull down a certain chawl which stood upon the land for the purpose of rebuilding upon it, and they proposed, with a view to improve the property, to erect a larger and more substantial building than the former one. They expended the surplus of ₹19,000 which was on their hands, but found that to complete the work a further sum of ₹20,000 was necessary. This they proposed to raise by mortgaging the trust-property. They calculated that the whole mortgage-debt would be paid off out of the surplus rents of the trust-property within three years. They filed this suit, praying that the Court would sanction the proposed mortgage. The Court, however, refused its sanction, and dismissed the suit. *DINSHAW NOWROJI BODE v. NOWROJI NARSARWANT BODE*
[I. L. R., 20 Bom., 46]

9. *Suit for declaration of trust—Breach of duty—Possession of trust property*—*Breach of duty*—In a suit for declaration of trust filed against lands, it must be shown that the party against whom the trust is prayed must have obtained a more or less rightful possession of the lands, but impressed with the obligation of a trust; that in a suit such as last mentioned, it must be shown that some duty *prima facie* fell on the defendants, of which they were committing a breach. *MUNSHIR HOSSAIN v. DINSHAW SEN*
[Bourke, O. C., 8: Cor., 94]

10. *Recognition of trust—Death of gift, Validity of—Oudh Estates Act (I of 1869), s. 8*—A talukdar, deceased before annexation, had provided by will for the succession of his five widows, one at a time, to his estate, with remainder to a son of his nephew. Settlement was made with the senior widow after the maturity, a sum granted to her as talukdar, with full power of alienation, and her name was afterwards entered in the lists prepared under s. 8 of the Oudh Estates Act, 1869. But certain of her acts were not explicable except on the understanding that she was abiding by the will.

TRUST—continued.

the 10th March 1892, at the relation of two members of the Jain community of Cutch, prayed that the charitable trusts of the testator's will might be carried out, and sought for accounts against the widow of the testator and the trustees of both the deeds, and for a scheme, etc. *Held* that the High Court of Bombay had jurisdiction to make a decree declaring the trusts upon which the trustees of the deed of October 1868 held the property comprised in that deed and for rectifying the deed in accordance with such declaration, but that the Court could not go further in settling a scheme. *Semble*—When money is bequeathed for the purpose of founding a charity outside the jurisdiction, the Court hands the money to the trustees named by the testator, leaving it to the Courts of the country in which the charity is to be established to settle the scheme. *Held* also that the suit was not barred by limitation. It was not one for rectification of the deed of 1868, but rather one against *P* (defendant No. 1) and her assigns, the trustees of the deed of 1868 and 1869, for the purpose of following the trust property in their hands and having it applied to the proper purposes of the trust, and therefore came within s. 10 of the Limitation Act (XV of 1877). Charges of fraud and dishonesty made against trustees of a charity must be established at the hearing of the case, and cannot be allowed to be reserved and proved subsequently in the course of taking accounts. Where the trust-deed of a charity, executed subsequently to the death of a testator, under whose will the charity was established, does not strictly conform to the provisions of the will, it is not the practice of the Court, when the discrepancy has been made by mistake, to visit the past consequences of the trust upon the trustees. The plaintiff in this suit demanded an account from *P* of the Bhimpura property from the testator's death to the execution of the deed of the 13th October 1868, and of the school-house property from the date of its purchase to the same time, and also an account against the trustees of the deed of 17th April 1869, of the income of the Bhimpura property, and of its application. *Held* that accounts ought not to be required from *P*. She had made over the property in question to trustees in 1868. There was no evidence that she had ever used any of the income for her own purposes, and the presumption was that she had faithfully discharged her duty. The account was probably barred by art. 120 of the Limitation Act (XV of 1877). The trustees of the deed of 1869 had paid over the income received by them to the trustees of the earlier deed of 1868, who were entitled to receive it; and therefore, no account would be decreed against them. The plaintiff further prayed for an account against the representatives of *R*, who had been trustee of the deed of 1868, from the date of its execution to his death in 1889. Under a decree passed in a previous suit (No. 113 of 1889), dated the 10th August 1893, brought by the trustees, they had received from *R*'s estate the balance which that suit they had claimed to be due from him to the charity. In that suit the trustees had not asked for an account against him. *Held* that the Advocate-General as plaintiff in the

and *M* 7. By his will the testator directed that a moiety of the rental of his half share should be spent on the sadhram (charitable or religious) endowment of a temple at Jachho in Cutch, and the other moiety thereof in establishing two sadhvaras, one at Jachho and the other in Palitana. He also set apart a sum of Rs. 1,26,000, of which Rs. 1,01,000 were to be expended in building a temple at Jachho, and the balance of Rs. 25,000 in erecting a market near the temple at Jachho, or, if that was impossible, it was to be spent in Palitana. The plaintiff complained that of the Rs. 1,26,000 about Rs. 60,000 had been spent in buying a property in Bombay, called the "school property," for the purpose of establishing a school there, and about Rs. 50,000 had been expended in erecting a temple at Jachho, but that nothing had been done with the balance, nor had a market been established at Jachho. All that had been done there was to erect three shops which cost about Rs. 2,000. The plaintiff further stated that in 1868 *P* (defendant No. 1) had made over the "school property" and the "Bhimpura property" to three trustees on trusts not strictly in accordance with the testator's will as above set forth. Under this deed the trustees were to apply one moiety of the net rents (1) in sadhvaras or alms-giving at Jachho and Palitana; (2) in feasting the caste people in Bombay and Jachho annually; (3) in the worship called satabhadra at Jachho and Palitana; (4) in erecting a temple in Bombay and Jachho; and (5) in entertaining and clothing the gorb (poor) in Bombay and Jachho. Of the remaining moiety of the rents (5) one-half was to go to sadhram (charities) of the darsar (temple) at Jachho; and (6) the other half to charities at such places as the trustees should think fit. In the following year, viz., on the 17th April 1869, *P* (defendant No. 1) and the owners of the other moiety of the "Bhimpura property" conveyed the whole of that property to trustees, who were to apply a moiety of the rents (which was to be considered as rent from *P*'s share of the property) (1) in sadhvaras and alms-giving at Jachho and Palitana; (2) in feasting the caste people in Bombay and Jachho annually on the anniversary of *R*'s death; (3) in the worship of the darsar called satabhadra, and in the entertainment and clothing of the gorb (poor) in Bombay and Jachho. The deed also directed the application of the rents of the other moiety of the "Bhimpura property," part of which was to go to a temple at Tera in Cutch and part to another temple at Jachho. This later deed, it will be observed, omitted altogether trusts (5) and (6) of the earlier one of 1868 in favour of sadhram for the temple of Jachho and for sadhram generally. The trustees appointed by the two deeds were not the same, though some of the trustees of the first were also the trustees of the second. The second deed did not recite or in any way refer to the first. At the date of suit all the trustees named in the deeds were dead except the second defendant. By subsequent deeds, however, new trustees had been appointed and they were all parties to the present suit. Defendants Nos. 2, 3, 4, 5, 6, and 7 were trustees of the "Bhimpura property," and defendants Nos. 8, 9, 10, and 11 of the school property. The plaintiff filed on

TRUST—continued.

predecessor was barred by the decree in that suit (1882). The trustees, having then committed to make for an account, could not sue again. The advocate-general intervened on the same interest as they did, and was the referee equally bound. But, however, that was not the case, the Court in the decree for its discretion would not direct the account asked against the trustees, but would direct the account against the estate of the deceased. The Court in the decree for its discretion would not direct the account against the estate of the deceased. The Court in the decree for its discretion would not direct the account against the estate of the deceased.

I. L. R., 18 Bom, 561

16. Transfer of property on

trust of property by contract sanctioned

for transportation for life, permitted in the

Revenue Court, in which, stating that he owned a

certain zamindari estate, that he had been so con-

vinced, and that it was necessary to make arrange-

ments for the payment of the Government revenue

and the management of the estate, he prayed that his

name might be removed from the revenue registers,

and that if it be recorded in the record held that

the transfer of the property by him to P was in the

nature of a trust. *Durga Prasad v. San Ram*, 1

I. L. R., 3 All, 361, referred to. *Hari Ram v.*

Durga Prasad

17. *I. L. R., 5 All, 408*

18. Holder of mortgage—The mortgagee by

sale of the mortgage—The mortgagee by

sale of the mortgage—The mortgagee by

sale of the mortgage—The mortgagee by

sale of the mortgage—The mortgagee by

sale of the mortgage—The mortgagee by

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sale of the mortgage—The mortgagee by

sale of the mortgage—The mortgagee by

father, according to custom, on his abdicating from the village by reason of his inability to pay his quota of Government revenue. The village was then abandoned from such village should receive back their property on their return and certain persons who abandoned from such village before such abandonment was sanctioned to pay the same should be paid for the same. The village was then abandoned from such village should receive back their property on their return and certain persons who abandoned from such village before such abandonment was sanctioned to pay the same should be paid for the same.

I. L. R., 170

20. *Abdicating co-shares*—If there is a clause of the will

in favour of a village, and in general terms that

the village should be paid for the same, and certain

persons who abandoned from such village before such

abandonment was sanctioned to pay the same should

be paid for the same. The village was then abandoned

from such village should receive back their property

on their return and certain persons who abandoned

from such village before such abandonment was sanc-

tioned to pay the same should be paid for the same.

The village was then abandoned from such village

should receive back their property on their return

and certain persons who abandoned from such village

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same should be paid for the same. The village was

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village should receive back their property on their

return and certain persons who abandoned from such

village before such abandonment was sanctioned to

pay the same should be paid for the same. The

village was then abandoned from such village should

TRUST—continued.

annas of our own eight annas to P, and have given

him possession of 4 annas of the 8 annas belong-

ing to S and (his brother), keeping the remaining

4 annas in our own possession: when S and (his

brother) return to the village, we three who are

in possession shall give up the 8 annas share of the

foregoing persons." In March 1880 S sued P for

possession of the 4 annas mentioned in the wajib-

ul-ulz as having been made over to him by H and

D out of the 8 annas share belonging to S and

his brother. He based his suit upon the wajib-ul-ulz,

but did not expressly state that the share in suit had

been entrusted to H and D on the understanding

that it should be returned to him when he reclaimed

it. The lower Appellate Court dismissed the suit as

barred by limitation, on the ground that P's posses-

sion of the share in suit became adverse in 1866 or

1867, more than twelve years before the institution

of the suit, when S, having returned to the village,

had claimed the share and P had refused to surren-

der it. On second appeal it was contended by S

that under the terms of the wajib-ul-ulz P's posses-

sion was that of a trustee, and his possession could

not be held to be adverse. Per SPARKIE, J.—That

inasmuch as there was no direct evidence that the

share in suit had been entrusted by S to H and D

on the understanding that it should be returned to

him when he reclaimed it, and as such a trust could

not be implied from the terms of the wajib-ul-ulz,

which amounted to nothing more than an acknow-

ledgment of S's title and an offer to surrender pos-

session when he returned, and as when he did return

in 1866 or 1867 P refused to surrender possession, S

was bound to have sued to recover the share in suit

within twelve years from the date of such refusal,

and as he had failed to do so, the suit was barred by

limitation. Per PEARSON, J.—That although no

mention was made in the wajib-ul-ulz of such a trust

as was contended for, yet the terms of that docu-

ment strongly suggested the creation of such a trust.

Having regard to the terms of the wajib-ul-ulz, and

to the fact that S and his brother were not strangers

to H and D, nor merely co-shares, but near blood-

relations, probably residing together on the same

premises and partners in agricultural labours, further

inquiry should be made with the view of elucidating

SAIVEX v. PIRAY SINGH. I. L. R., 3 ALL, 453

23. Retirement and disability

of trustees—Effect of, on trust.—Where property

is assigned to trustees by an insolvent trader for the

purpose of having it equally distributed among his

creditors, such a trust does not become inoperative

by reason of the retirement of two out of three trus-

tees, and of the inability of the third to discharge his

duties properly. BAYMAGARTNER v. STEPHENSON

[3 AGRA, 321

24. Creditor's trust-fund—Un-

claimed dividends, Suit for distribution of.—Where

a creditor's trust-deed contained no provision for

redistribution of unclaimed dividends, and a suit was

brought by the representatives of one of the credi-

tors, party to the deed, for the administration and dis-

TRUST—continued.

tribution of funds in the defendant's possession

unclaimed by them for forty years.—Held that the

plaintiff was not entitled to such relief. WILDE v.

BANNING, L. R., 2 Bq., 377, distinguished. MAXICKA-

VEAU ALDRAI v. ABBOTTNOT & Co.

I. L. R., 4 Mad, 404

25. Resulting trust—Intention of

party—Implied trust, Presumption of.—Suit

brought to recover possession of a taluk, upon the

alleged ground that the moneys with which the pur-

chase was made were not the moneys of the person in

whose name the property was bought, but of a lady

with whom he was living as her husband, and that there

was a resulting trust in her favour. The Privy Council

considered that the very principle of a resulting trust

was that the property had been purchased with money

belonging to another, with an implied trust that it

should belong to that other person to whom the money

also belonged; but that, if it was the intention of the

person to whom the money belonged that there should

be no such trust, no such implied trust could arise by

implication, and the presumption would then be

met by the facts. ASHURBOONISSA KHANVAT v.

ASHURBOONISSA

[17 W. R., 259; 14 Moore's I. A., 433

26. Stat. 29 Car. II, c. 3.—The plaintiff, who was

the widow of G, sued the defendant, the executrix of

J, to recover a sum of Rs. 394-9-6, part of the pur-

chase-money of a house which had been sold by J in

his lifetime, and which the plaintiff alleged had been

shortly before his death, conveyed by her husband G

to J in trust to sell and hold the proceeds in trust

for G's family. The defendant denied the trust, and

insisted that J had purchased the house from G for

valuable consideration. Both J and G were Parsis.

Held that, even assuming that no consideration was

given by J to G for the house, the plaintiff was not

entitled to succeed. In the absence of consideration,

the trust of the house, which was admittedly con-

veyed by G to J, would have resulted to G,

unless, under the provisions of s. 7 of the Statute

of Funds (39 Car. II, c. 3), he (G) had declared

in writing some other trust which was to

supercede the resulting trust in his own favour.

No such declaration of trust in writing was proved.

If, on the other hand, the trust did result to G, he,

no doubt, might, as equitable owner of the house,

have disposed of his interest by will. If he did so,

the plaintiff had not qualified herself to sue as his

representative. Probate had not been obtained of the

deceased husband entitled to enforce his rights, and,

amongst others, his rights under the supposed

resulting trust. Except as executrix or as residua-

trix, the plaintiff could not recover property or

enforce rights equitably vested in her deceased

husband. BAI MANECKJI v. BAI MENKAJI

[I. L. R., 6 Bom., 363

TRUSTEE—continued.

common fund with their own moneys, and such a course of dealing may expose the trustees or administrators to criminal as well as civil liabilities. In the MATTER ON THE PETITION OF COWIE
[I. L. R., 6 Cal., 70: 7 C. L. R., 19

3. Appointment of new trustees
—Probate—Executors—Debtors alienating property of their testator's estate before obtaining probate—Title of alienees to such property—Right of holder of property to vote at election of trustee before obtaining probate—Trustee elected by debenture-holders—Meeting of debenture-holders to elect a trustee—Exclusion from meeting of holders of debentures obtained from executors before probate—Validity of election of trustee elected at meeting from which such debenture-holders were excluded.—In order to secure certain money which it had borrowed by the issue of debentures, the D Company on the 23rd November 1883 conveyed certain lands, etc., to three trustees, K, G, and D, by way of mortgage. With regard to the appointment of new trustees in case any trustee should die, etc., the indenture of mortgage provided that, in certain events, the surviving or continuing trustees might convene a meeting of the debenture-holders for the purpose of nominating a new trustee; and that at such meeting the election of such new trustee should be decided by a majority of votes of the debenture-holders present in person, each party having only one vote, and in case of an equality of votes, then the chairman of the meeting should have a casting vote. K, one of the trustees appointed under the deed, died on the 9th February 1886, leaving a will whereby he appointed three executors. At the time of his death K was the holder of one moiety of the debentures, viz., 1,400 debentures of the value of £7,00,000. The two remaining trustees, G and D, called a meeting of the debenture-holders for the 27th February 1886 to elect a trustee. Previously to the meeting and for the purpose of having the large interests of K's estate adequately represented, the executors of K distributed some of the debentures in their hands belonging to K's estate, among nominees for the purpose of voting at the meeting; and they also sold some of the debentures. Among the persons to whom debentures were sold were the first three plaintiffs. Pursuant to the notice convening the meeting, the plaintiffs and other persons, to whom debentures belonging to the estate of K had been given or sold, presented themselves and claimed to attend the meeting; but none of them, except the three executors (plaintiffs 4, 5, and 6) of K, were allowed to attend, and they were admitted only in their capacity as executors. Defendant No. 1 was chairman of the meeting, and he ruled that the three executors had a joint right, in their capacity as executors, to give one vote upon any proposition that might be submitted to the meeting. At the meeting it was proposed that the holders of the debentures, who claimed admission to the meeting, should be permitted to attend, and would not allow it to be put. The executors therefore withdrew from the meeting. After they had withdrawn, the third defendant, P, was elected a trustee. At the date of

TRUSTEE—continued.

Nomination of—
See REMOVAL. I. L. R., 18 All., 227
of temple.
See CASES UNDER ACT XX OF 1863.

of temple, Breach of trust by—
See JURISDICTION OF CRIMINAL COURT—
GENERAL JURISDICTION.
[I. L. R., 1 Mad., 55
Right of, to sue.
See GUARDIAN OF ADMINISTRATION—
RIGHT TO SUE OR EXERCISE DEGREE
WITHOUT CERTIFICATION.
[I. L. R., 20 Mad., 162
I. R., 24 I. A., 73
See DEBENTURE AND CREDITORS.

[I. L. R., 20 Mad., 91
Suit by—
See HINDU LAW—WILL—CONSTRUCTION
OF WILLS—VESTED AND CONTINGENT
INTERESTS . I. L. R., 1 Bom., 269
Suit by, to eject trespasser.
See RIGHT OF SUIT—CHARITIES AND
TRUSTS . I. L. R., 18 Bom., 721
Suit for removal of—
See ACT XX OF 1863, s. 14.

[I. L. R., 2 Mad., 187
I. L. R., 19 All., 104
See REMOVAL. I. L. R., 18 All., 227
I. L. R., 21 Bom., 556
I. L. R., 23 Bom., 659
See LIMITATION ACT, 1877, ART. 134.
[I. L. R., 24 Cal., 418
See CASES UNDER RIGHT OF SUIT—
CHARITIES AND TRUSTS.

See VALUATION OF SUIT—SUITS.
[I. L. R., 19 All., 104
1. Relinquishment by one
trustee—Effect of relinquishment. In a contest
between three trustees or managers of an endowment,
each entitled to a third share in the profits of the
property, if one of them withdraws from the contest,
his share is held to have been relinquished in favour
of the remaining partners, and to have merged
in the general account to be rendered by the trustees
or managers. BUZZ RUMI v. LUTAVUT HOSSAIN.
KHOJEDJOONISSA BIRKE v. LUTAVUT HOSSAIN
[W. R., 1864, 171

2. Breach of trustees' duty—
Mixing trust funds with money of trustees—Com-
mission on trust moneys.—It is a grave breach of
duty in trustees, or administrators taking on letters
of administration, to estates in this country under
powers of attorney from executors or next of kin
abroad, to mix the incomes raised by them from
trust properties, or the funds of the estate, in one

TRUSTEE—continued.

7. Suit to set aside allegations

by testator—*See* *trusts*—*See* *trusts*

8. Suit for mesne profits where

estates had been under care of

Ward—*See* *trusts*—*See* *trusts*

9. Plaintiff, the remainder of share, and to

recover two shares which the alleged trust part of

the share was awarded. The village or family

belonged to it, well as the present defendant,

the share was awarded. The village or family

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contended that the executor was valid, and that the

persons to whom the executor had given or sold

property had been bona fide purchasers for value

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TRUSTEE ACT—concluded.

interested in such property are either out of the jurisdiction, married women, or minors, and the place of abode of others of them is unknown, the Court will, on petition, under the Trustee Act, appoint a person to convey the interest of such persons to any purchaser, notwithstanding that, at the time the order is applied for, no contract for the sale of the property has been entered into. But the Court cannot make such an order with respect to the interest of a party who has not been served, and who has not entered appearance. *LACERSTEEN v. ROSTAN*

[I. L. R., 7 Cal., 32

s. 35—*Application for removal of trustee—Ground for removal—Stat. 13 & 14 Vict., c. 60, s. 32.*—Where a petition was presented to the High Court praying for the removal, under s. 35, Act XXVII of 1866, of certain trustees of a will, on the grounds *inter alia*, of misappropriation, waste, and breach of trust, and for the appointment of new ones,—*Held* that the matters alleged were much too grave to be disposed of on a mere application, and that, as the respondents opposed the appointment of new trustees, the petitioners should institute a regular suit. Act XXVII of 1866, s. 35, is analogous to 13 & 14 Vict., c. 60, s. 32. The Courts in this country ought, in analogy to the rulings of the English Court of Chancery, to refuse jurisdiction under this section on a mere application alleging misconduct or any other cause, when the trustees-whom it is sought to remove are willing to act and refer the applicant to a suit. *IN THE GOODS OF POWELL* [6 N. W., 54

TRUSTEES AND MORTGAGES ACT.

(XXVIII of 1866), s. 43—*Administrator-General—Taking opinion of Court on question respecting the administration—Question affecting rights of parties inter se—Refusal of Court to express opinion.*—The Administrator-General of Bombay, having taken out letters of administration (having effect throughout the Bombay Presidency) to the estate of one A. B., deceased, and having a balance in his hands to the credit of the said estate after having fully administered the same, was applied to by G. B., the brother of the said A. B., deceased, who had taken out letters of administration in England to the estate of his deceased brother, to hand over to him, the said G. B., the balance in question,—the said G. B. claiming to be the administrator of the domicile of the deceased, and, as such, to be entitled to all the personal assets of his estate wheresoever situate. Being in doubt as to whether he might safely accede to the request, the Administrator-General of Bombay, by petition under s. 43 of the Trustee and Mortgagees Act, XXVIII of 1866, submitted the question to the High Court for its opinion, advice, and direction. *Held* that the question being one of considerable difficulty and importance, and involving, moreover, in its decision questions which might seriously affect the rights of parties inter se, it was not a question such as was contemplated by s. 43 of the Trustee and Mortgagees Act, XXVIII of 1866, nor one upon which the Court ought to give any

TRUSTEE ACT—continued.

be made. *IN THE MATTER OF FORT GLOUCESTER MILLS CO.*

Bourke, O. C., 260

(XXVII of 1866), s. 3—*Hindu trusts*

—*Equitable jurisdiction of High Court—Appointment of new trustee—Supreme Court Charter, 1823.*

The High Court may exercise the summary powers conferred upon it by the Trustee Act (XXVII of

1866) in the case of Hindu trusts. S. 3 of the Trustee Act, which provides that the power and authority given by the Act to the High Court shall be exercised only "in cases to which English law is

applicable," cannot be intended to limit the operation of the Act only to cases to which, in their whole extent, the law prevailing in England applies without

qualification or reserve, as this would virtually exclude the Act in any case on which an Act of the

Indian Legislature has any bearing. The cases referred to in the section must be cases to which

English law is in some measure applicable, but in what measure is not indicated in the Act. English

law must be regarded as applicable in the sense intended if the principles recognized by the English

Equity Courts are applicable. At the date of the grant of the Charter to the Supreme Court of Bombay

in the year 1823, English equity had become a system which would deal with a body of quasi-common law

in a scientific manner and in obedience to known and uniform rules. When it applied its method to the

determination or the constitution of a right, even based on the Hindu or Mohammedan law, it administered

English law. In this sense "English law was applicable" at the date of the passing of the Trustee

Act of 1866 to all cases in which peculiarly equitable doctrines had obtained recognition in the relations

between the native inhabitants of Bombay. Those doctrines could not be employed to subvert the

native substantive laws, but they afforded a means of ameliorating them by a system of rules borrowed from the English Court of Equity. Trusts

are recognized in the Hindu as well as in the English system of law. But while the substantive

Hindu law insists strongly on the suppression of fraud and the fulfilment of promises, it fails to

furnish the detailed rules by which effect is to be given to its principles in cases of trust. If the Court

is called on to give effect to a trust in any given case, it looks to the Hindu law of property to determine

the estate of the trustee, but with reference to the duties of trustee and the rights of beneficiaries it is

governed by the rules of English equity. There are no others that it can apply. In meeting an exigency

or in taking cognizance of a form of right not directly provided for in the Shastras, the Court, in exercising

its jurisdiction under s. 41 of the Charter of 1823, may apply Hindu law. But taking Hindu law as

one of its data, it applies "English law" also in the form of equity to all or nearly all the questions that

arise. *IN RE KANAKDAS NARAYANDAS*

[I. L. R., 5 Bom., 154

ss. 20 and 32—*Appointment of*

person to convey property on behalf of persons out

of the jurisdiction and under other disabilities.—

Where property has been, by an order of Court,

directed to be sold, and where some of the parties in-

TRUSTS ACT (II OF 1882)—concluded.

See Appeal—Deorhes.

[I. L. R., 19 All, 131

ss. 82, 88.

See BENAMI TRANSFERENCE—CERTIFIED

PURCHASER—CIVIL PROCEDURE CODE.

I. L. R., 22 All, 434.

s. 88.

See MORTGAGE—REDEMPTION—RIGHT OF

REDEMPTION I. L. R., 23 Mad, 377

s. 91.

See VENDOR AND PURCHASER—COMPLE-

TION OF TRANSFER.

[I. L. R., 24 Bom, 400

See VENDOR AND PURCHASER—INVALID

SALES I. L. R., 18 Mad, 43

ss. 91, 95.

See INTUITION—SPECIAL CASES—EXCUT-

TION OF DEORHE.

[I. L. R., 21 Mad, 353

TURN OF WORSHIP OF IDOL.

Right to—

See DAMAGES—SUITS FOR DAMAGES—

TORTS I. L. R., 3 Cal, 390

See LIMITATION ACT, 1877, ART. 131 (1871).

I. L. R., 4 Cal, 683

[I. L. R., 8 Cal, 807

6 B. L. R., 352; 15 W. R., 29

U

UGANDA, CONSULAR COURT OF—

See JURISDICTION OF CRIMINAL COURT—

GENERAL JURISDICTION.

[I. L. R., 22 Bom, 54

UMRIR.

See CASES UNDER ARBITRATION—AP-

POINTMENT OF ARBITRATORS AND

UMRIR.

UNCHASTITY.

See HINDU LAW—ADOPTION—WHO MAY

OR MAY NOT ADOPT. 5 B. L. R., 362

[I. L. R., 5 Mad, 358

I. L. R., 9 Bom, 94

See CASES UNDER HINDU LAW—INHERIT-

ANCE—DIVESTING OR EXCLUSION FROM

AND FORTITURE OF, INHERITANCE—

UNCHASTITY.

UNCHASTITY—concluded.

See HINDU LAW—MAINTENANCE—RIGHT

TO MAINTENANCE—WIDOW

[12 B. L. R., 238

L. R., I. A., Sup. Vol. 203

I. L. R., 1 Bom, 559

I. L. R., 7 Bom, 84

I. L. R., 9 Bom, 108

I. L. R., 15 All, 382

I. L. R., 17 Mad, 392

See HINDU LAW—MAINTENANCE—RIGHT

TO MAINTENANCE—WIFE I Mad, 372

[2 Mad, 337

I. L. R., 19 Mad, 6

See HINDU LAW—STRIDHAN—EFFECT OF

UNCHASTITY I. L. R., 1 All, 46

UNCOVERANTED SERVICE FAMILY

PENSION FUND.

See MUTUAL BENEFIT SOCIETY.

[I. L. R., 7 Cal, 1

I. L. R., 22 Bom, 451

Entrance Certificate of—

See STAMP ACT, 1879, S. 3, SUB-S. 15.

[I. L. R., 19 Cal, 499

UNDER-TAKING NOT TO SUE.

See ARREST—CIVIL ARREST.

[I. L. R., 1 Cal, 78

See WARRANT OF ARREST—CRIMINAL

CASES 2 B. L. R., A. Cr, 17

UNDER-TENURE.

See CASES UNDER JURISDICTION OF CIVIL

COURT—REVENUE COURTS—ORDERS

OR REVENUE COURTS.

See CASES UNDER SALE FOR ARREARS OF

RENT—INDEMNITIES.

See CASES UNDER SALE FOR ARREARS OF

RENT—PORTION OF UNDER-TENURE

SALE OF.

Avoidance of—

See CASES UNDER SALE FOR ARREARS OF

RENT—INDEMNITIES.

Suit to cancel—

See LIMITATION ACT, 1877, ART. 121

(1871, ART. 119) I. L. R., 4 Cal, 880

[I. L. R., 25 Cal, 167

UNLAWFUL ASSEMBLY—continued.

9. *Interpretation of the act of possession as a nuisance.*—*Held* that the act of a procession was forbidden by cl. 4 of s. 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community. ANONYMOUS [5 Mad, Ap, 6

10. Penal Code, ss. 141, 143—*Association of right.*—One of two village factions objected to the other passing in procession over a vacant piece of ground in the main street of the village. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th May a procession was formed and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force; the police ordered them to disperse; this order having been neglected, the police prevailed on the other faction to abandon the procession. *Held* that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly. GREEN-EMPRESS v. THAKARUD [I. L. R., 14 Mad, 126

11. Penal Code, s. 143—*Dispute as to possession of land.*—Assembly going with armed men to sow land.—On the trial of certain persons charged with being members of an unlawful assembly, it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompanied by a body of men armed with lathes; that they were prepared to use force, if necessary; and that the lathes kept off the opposite party by brandishing their weapons while the land was sowed. *Held* that the accused were rightly convicted of being members of an unlawful assembly, under s. 143 of the Penal Code. *Shanker Singh v. Burmah Mitho, 23 W. R., Cr., 25*, distinguished. IN THE MATTER OF PRABU MOHUN SIBGAR, PRABU MOHUN SIBGAR v. EMPRESS [I. L. R., 8 Cal, 639

12. Penal Code, ss. 143 and 353—*Using criminal force to public servant in execution of duty.*—Resistance to search-warrant.—Where the officer in charge of a police station required the search to be made in a house within the limits of his station, and such officer, on being required, deputed two officers subordinate to him to make the search without delivering to them the order in writing required by s. 379 of Act X of 1872, it was held that the persons resisting the search attempted could not be lawfully convicted under ss. 353 and 143 of the Penal Code. *QUEEN v. NARAIN, 7 N. W., 208*

13. Penal Code, s. 147—*Hiding—Abating nuisance.*—A joint owner of a parcel of land, erected on it an edifice without the consent of

UNLAWFUL ASSEMBLY—continued.

the right to keep the river channel clear by preventing the construction of the bund and by demolishing it so far as it was constituted, and that the case came within s. 141, para. (1). *Queen v. Mitho Singh, 23 W. R., Cr., 25*; *Shanker Singh v. Burmah Mitho, 23 W. R., Cr., 25*; and *Birjoo Singh v. Khan Lat, 19 W. R., Cr., 66*, referred to and commented on. (NARAYAN LAT DAS v. GREEN-EMPRESS [I. L. R., 16 Cal, 208

4. Penal Code, ss. 141 and 154—*Ground of land on which unlawful assembly is held.*—*Common object.*—*Held* that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code. *QUEEN v. SHANKAR CHANDER PATE [12 W. R., Cr., 75*

5. *Ally and unlawful assembly.*—There is no ground for the distinction between an unlawful assembly as a premeditated act and an ally as a sudden one; for according to s. 141 of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. IN THE MATTER OF THE PETITION OF LOKNATH KAN [18 W. R., Cr., 2

6. *Maintenance of rights.*—*Intention of parties.*—No charge of members of an unlawful assembly under s. 141, Penal Code, can be sustained, where the intention of the parties was not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised. *SURESH SINGH v. BURMAN MANTO [23 W. R., Cr., 25*

7. *Person joining it and staying to prevent mischief to property.*—It cannot be said that a person intentionally joins an unlawful assembly or continues in it when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered, to prevent mischief being done to his own property which he had a right to protect. *BIRJOO SINGH v. KANUP LAT [19 W. R., Cr., 66*

8. *Riots carrying away crops.*—Where the defendants, raiyats of a portion of a zamindari sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped and the raiyats were assembled in such numbers and so armed that nothing could be done against them.—*Held* by the High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code. ANONYMOUS [4 Mad, Ap, 65

UNLAWFUL ASSEMBLY—continued.

17. *Not in which man was killed*—*Capital Act*—In a case of the

in which a man was killed, the whole of the

members of the unlawful assembly as well as the vic-
tims as the worsted, were held equally guilty of

culpable homicide not amounting to murder. *Queen*

v. M'KAY, 11 Cr., 103

18. *Common object*—*Capital Act*—*Effect on others*

murder under a 31, Penal Code. *Effect on others*

charged under a 11—*See* *Section 11*—Where a

prisoner is or is not a party to the offence of

the Penal Code, it is doubtful if he can be held to

have committed the offence of murder within the

meaning of a 11 so as to make other prisoners by a

double construction, guilty of murder. *11*

L'ETAT v. L'ETAT, 8 Cal., 730

19. *Common object*—*Capital Act*—*Effect on others*

murder under a 31, Penal Code. *Effect on others*

charged under a 11—*See* *Section 11*—Where a

prisoner is or is not a party to the offence of

the Penal Code, it is doubtful if he can be held to

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meaning of a 11 so as to make other prisoners by a

double construction, guilty of murder. *11*

L'ETAT v. L'ETAT, 8 Cal., 730

20. *Common object*—*Capital Act*—*Effect on others*

murder under a 31, Penal Code. *Effect on others*

charged under a 11—*See* *Section 11*—Where a

prisoner is or is not a party to the offence of

the Penal Code, it is doubtful if he can be held to

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meaning of a 11 so as to make other prisoners by a

double construction, guilty of murder. *11*

L'ETAT v. L'ETAT, 8 Cal., 730

21. *Common object*—*Capital Act*—*Effect on others*

murder under a 31, Penal Code. *Effect on others*

charged under a 11—*See* *Section 11*—Where a

prisoner is or is not a party to the offence of

the Penal Code, it is doubtful if he can be held to

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double construction, guilty of murder. *11*

L'ETAT v. L'ETAT, 8 Cal., 730

22. *Common object*—*Capital Act*—*Effect on others*

murder under a 31, Penal Code. *Effect on others*

charged under a 11—*See* *Section 11*—Where a

prisoner is or is not a party to the offence of

the Penal Code, it is doubtful if he can be held to

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L'ETAT v. L'ETAT, 8 Cal., 730

23. *Common object*—*Capital Act*—*Effect on others*

murder under a 31, Penal Code. *Effect on others*

UNLAWFUL ASSEMBLY—continued.

11. *Another joint owner*—*A dispute arose*, and the

Magistrate on inquiry ordered, under a 530 of the

Criminal Procedure Code 1872, a to be put in pos-

session of the 1st of the land on which the edifice

had been erected. It subsequently brought a suit in

the Court to establish his title to joint possession

of the whole parcel, and for a declaration that it was

not entitled to erect any edifice thereon, and the

Magistrate on inquiry ordered, under a 530 of the

Criminal Procedure Code 1872, a to be put in pos-

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UNLAWFUL ASSEMBLY—continued.

the constable, and that both he and the station-house officer were guilty of murder. *QUEEN v. SUBBA NAIR*. I. L. R., 21 Mad., 249.

26. Penal Code, ss. 147, 148, 149, and 304—*Rioting armed with a deadly weapon—Common object of unlawful assembly, Statement of, in charge—Error in charge misleadingly accused—Criminal Procedure Code (1882), s. 226.*—Before a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge sheet,—*Held* that, inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged, and which consequently the accused had not had an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section.

[I. L. R., 22 Cal., 276]

27. Penal Code, s. 149—*Common object—Murder—Prosecution of common object.*

Neither of the cases of *Queen v. Sabed Ali*, 11 B. L. R., 347; 20 W. R., Cr., 5, and *Hari Singh v. Empress*, 3 C. L. R., 49, lays down any hard and fast rule as to the circumstances under which one member of an unlawful assembly can be deemed guilty of an offence committed by another under the provisions of s. 149 of the Penal Code, and every case must be decided on its own merits. In dealing with such cases, while, on the one hand, it is necessary for the protection of the accused that he should not, merely by reason of his association with others as members of an unlawful assembly, be held criminally liable for offences committed by his associates, which he himself neither intended nor knew to be likely to be committed. On the other hand, it is equally necessary for the protection of the peace that members of an unlawful assembly should not lightly be let off from suffering the penalties for offences for which, though committed by others, the law has made them punishable by reason of their association with the actual offender with one common object. Those two cases respectively emphasize the necessity of keeping these considerations in view. Members of an unlawful assembly may have a common object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of s. 149 may be

UNLAWFUL ASSEMBLY—continued.

and under the leadership of one who to the knowledge of the rest is armed with a gun, assembled for the purpose of forcibly carrying off another man's property, and if in effecting that purpose any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code. *Queen v. Sabed Ali*, 11 B. L. R., 347; 20 W. R., Cr., 5, cited. *Hari Singh v. Empress* [3 C. L. R., 49]

23. *Acts taking place after unlawful assembly is over.*—Where, after the object of an unlawful assembly had been accomplished and the opposite party driven away, one of the members entered into an altercation with another and wounded him with a sabre-spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object. *QUEEN v. BINOD* [24 W. R., Cr., 66]

24. Penal Code, ss. 151 and 188—*Assembly of five or more persons—Lawful command.*—Where the object of only three persons was to draw a crowd and their action was such as was calculated to cause a crowd of fifty or sixty persons likely to cause a disturbance of the public peace,—*Held* that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code (Act XLV of 1860), and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section. An order given by an officer superior in rank to an officer in charge of police stations commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X of 1872). *EMPERESS v. TOWERS*

25. Penal Code (Act XLV of 1860), ss. 302, 304—*Good faith—Order of superior officer—Hiring on an unlawful assembly.*—A caused crops to be sown on land, as to the enjoyment of which there was a dispute between her and B. Persons having proceeded to reap the crops on behalf of B, the servants of A went to the place with the station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse, but they did not do so; he then told one of the constables to fire, and he fired into the air. Some of the reapers remained and assumed a defiant attitude. The station-house officer, without attempting to make any arrests and without warning the reapers that, if they did not desist from reaping, they would be fired at, gave orders to shoot, and one of the constables fired and mortally wounded one of the reapers. It was found that neither the station-house officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them. *Held* that the station-house officer and the constable were not acting in good faith, and that the order to shoot was illegal and did not justify

Penal Code, s. 317.—Change of Person.—*Where a person is charged with a crime, and person—Criminal Procedure Code, 1892, s. 222.—Held, where a person was tried for an unlawful offence and convicted on charges which did not allege the time when, place where, or point to any known or unknown person with whom the offence was committed, and without any proof of these particulars, the facts proved*

UNPROFESSIONAL CONDUCT.

ALL CASES UNDER LEADS - IDENTIFY
SCENARIO, AND DISMISSE
UNSUBS/WORKHOURS.

See DAMAGES—RECOVERIES OF DAMAGES.
[O B. T. R., Ap., 20
See ISSUANCE—MAYINE ISSUANCE.
[Cor., G. S. Hyde, 107
S. Moore's T. A., 301

Government. Each case must depend upon its own particular circumstances. The existence of a firm

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UNLAWFUL ASSEMBLY—concluded.

different on different members of the same unlawful assembly. JANARDIN & QUAY-BREKES
[I. L. H., 23 Cal., 308]

Unlawful compulsory labour—Criminal force—Bribery—Witnesses' confinement—

Criminal force—Slavery—Husband and wife—

and that they were locked up at night. On these allegations the accused was convicted by the first

by Konnia, J.—That upon the facts of the case the complainants never gave their full and free consent to work and labor for the accused, and that the accused therefore did unlawfully compel them to labor against their will, and that the conviction is sound. 374 was right.

Quinn-L. J. agrees. I T. R., 19 Cal., 573.

by Konnia, J.—That upon the facts of the case the complainants never gave their full and free consent to work and labor for the accused, and that the accused therefore did unlawfully compel them to labor against their will, and that the conviction is sound. *MAY 17, 1894.* QUEREN-L. JEFFERS

(13 H. L. R., Ap, 3)
S. I. T. E. R. - M. I. S. C. E. L. L. A. N. O. U. S. C. A. S. E. -

[7 Born, A.C., 88

See SET-OFF—GENERAL CASES.

17 W. R., 113
3 Mad., 296
3 Agric., 43, 97
23 W. R., 1
I. L. R., 4 Bom., 407
I. L. R., 11 Cal., 557
I. L. R., 7 All., 284

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UNLAWFUL ASSEMBLY—continued.

the constable, and that both he and the station-house officer were guilty of murder. *QUEEN-EMPERESS v. SUBBA NAIR*. I. L. R., 21 Mad., 249.

26. Penal Code, ss. 147, 148, 149, and 304—*Rioting armed with a deadly weapon—Common object of unlawful assembly, Statement of, in charge—Error in charge misleading accused—Criminal Procedure Code (1882), s. 225.*

Before a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge sheet,—*Held* that, inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged, and which consequently the accused had not had an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section.

27. Penal Code, s. 149—*Common object—Murder—Prosecution of common object—Neither of the cases of Queen v. Sabed Ali, 11 B. L. R., 347, 20 W. R., Cr., 5, and Hari Singh v. Empress, 3 C. L. R., 49, lays down any hard and fast rule as to the circumstances under which one member of an unlawful assembly can be deemed guilty of an offence committed by another under the provisions of s. 149 of the Penal Code, and every case must be decided on its own merits. In dealing with such cases, while, on the one hand, it is necessary for the protection of the accused that he should not, merely for reason of his association with others as members of an unlawful assembly, be held criminally liable for offences committed by his associates, which he himself neither intended nor knew to be likely to be committed. On the other hand, it is equally necessary for the protection of the peace that members of an unlawful assembly should not lightly be let off from suffering the penalties for offences for which, though committed by others, the law has made them punishable by reason of their association with the actual offender with one common object. Those two cases respectively emphasize the necessity of keeping these considerations in view. Members of an unlawful assembly may have a common object of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of the common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of s. 149 may be*

UNLAWFUL ASSEMBLY—continued.

and under the leadership of one who to the knowledge of the rest is armed with a gun, assembled for the purpose of forcibly carrying off another man's property, and if in effecting that purpose any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code. *Queen v. Sabed Ali, 11 B. L. R., 347; 20 W. R., Cr., 5, cited. HARI SINGH v. EMPRESS*

[3 C. L. R., 49

23. *Acts taking place after unlawful assembly is over.*—Where, after the object of an unlawful assembly had been accomplished and the opposite party driven away, one of the members entered into an altercation with another and wounded him with a fish-spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object. *QUEEN v. BINOD* [24 W. R., Cr., 66

24. Penal Code, ss. 151 and 188—*Assembly of five or more persons—Lawful command.*—Where the object of only three persons was to draw a crowd and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace,—*Held* that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code (Act XLV of 1860), and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section. An order given by an officer superior in rank to an officer in charge of police stations commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse is a law-ful order within the meaning of s. 180 of the Code of Criminal Procedure (Act X of 1872). *EMPRESS v. THOKEER* I. L. R., 7 Bom., 42

25. Penal Code (Act XLV of 1860), ss. 302, 304—*Good faith—Order of superior officer—Firing on an unlawful assembly.*—A caused crops to be sown on land, as to the enjoyment of which there was a dispute between her and B. Persons having proceeded to reap the crops on behalf of B, the servants of A went to the place with the station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse, but they did not do so; he then told one of the constables to fire, and he fired into the air. Some of the reapers remained and assumed a defiant attitude. The station-house officer, without attempting to make any arrests and without warning the reapers that, if they did not desist from reaping, they would be fired at, gave orders to shoot, and one of the constables fired and mortally wounded one of the reapers. It was found that neither the station-house officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them. *Held* that the station-house officer and the constable were not acting in good faith, and that the order to shoot was illegal and did not justify

UNLAWFUL ASSEMBLY—*continued*.

different on different members of the same unlawful assembly. *TANJURPIN & QUEEN-BURNERS*

UNLAWFUL COMBINATION.
See CONSPIRACY OFFENCE
[I. L. R., 21 Cal., 103]

Unlawful compulsory labour—
Criminal force—Slavery—If wrongful confinement—
Penal Code (Act XIV of 1860), ss 334, 335, 374

—The accused induced the complainant, who he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off the debts. The complainants were to, and did in fact, receive no pay by the accused as he insisted on their working for him, and punished them by beating them if they did not do so. The complainants in addition alleged that they were prevented leaving the accused's premises, and that they were to keep up at night. On these allegations the accused was convicted by the first Court of offences under ss. 344, 370, and 374 of the Penal Code. On appeal the convictions under the two former sections were quashed, the evidence as to definition being disbelieved, but that under s. 374 was upheld on the ground that by magnifying the complainant's debts to him and never settling them, the accused had unlawfully compelled them to go on working for him against their will. On a rejoinder to show cause why the conviction should not be quashed, *PERKINAY, C.J.* and *BEVER*.

quashed, C.J.—That the conviction was erroneous and must be set aside. *PERKINAY, C.J.*—A person who insists that another, who has consented to serve him, shall perform his work, does not unlawfully compel such person to labour against his will within the meaning of s. 374 of the Penal Code, because it is a thing which such person has agreed to do, but if he insists on such person working for him, and that the person has not consented to do so, then the conviction is not valid. *PERKINAY, C.J.* and *BEVER*.

quashed, C.J.—That upon the facts of the case the labour against their will, and that the conviction is not valid. *PERKINAY, C.J.* and *BEVER*.

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UNLAWFUL OFFENCE.

Penal Code, s. 377—Charge—Particulars as to time, place, and person—Criminal Procedure Code, 1892, s. 223—Ifd where a person was tried for an unnatural offence and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom the offence was committed, and without any proof of these particulars, the facts provided

See CASES UNDER PLEADING—HEMORAL STERILIZATION, AND DISMISSAL.

UNPROFESSIONAL CONDUCT.
[I. L. R., 6 All., 204]

See CASES UNDER PLEADING—HEMORAL STERILIZATION, AND DISMISSAL.

UNSEAWORTHINESS.
See CONTRACT—COVENANTS—FIDUCIARY
[3 B. L. R., O. C. 157]

See DAMAGES—HEMORRHOIDS OF DAMAGES.
[8 B. L. R., Ap., 20]

See INVESTIGATION—MARRIAGE INVESTIGATION
[Cor., 6, 3 Hyde, 107]

UNSETTLED POLICIA.
Hereditary tenure—Evidence of possession or receipt of rent—There is no long uniform current of decisions as to the evidence to show that every possessor, not permanently settled, is necessarily only a tenant for life, or at the will of the Government. Each case must depend upon its own particular circumstances. The evidence of a permanent estate therein, and the manner by which it has been held, are matters judicially determinable on legal evidence. In India the proof of possession or

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UNSTAMPED DOCUMENTS.

Admissibility of, in evidence.

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED IN COURT BELOW—UNSTAMPED DOCUMENTS. See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.

UPAN CHOWKI TENURE.

See ALIEN PROPRITY—RIGHT TO AND LIABILITY FOR . I. B. L. R., A. C., 167

USAGE.

See CASES UNDER CUSTOM.

USE AND OCCUPATION.

See LANDLORD AND TENANT—HOLDING OVER AFTER TENANCY . 4 W. R., 24

See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 16 Bom., 568

See MINE, JURISDICTION OF . I. L. R., 23 Cal., 425

See SMALL CAUSE COURT, MOROSSIL—JURISDICTION—RENT, SUIT FOR . I. L. R., 5 Bom., 572

I. L. R., 6 Bom., 79
I. L. R., 17 Cal., 541
I. L. R., 24 Cal., 557
I. L. R., 22 Mad., 149

Decree for—

See PLAINT—AMENDMENT OF PLAINT. I. L. R., 22 Cal., 752
See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—RENT.

I. L. R., 243
I. L. R., 27 Cal., 239
I. L. R., 18 Cal., 652

USER.

See FERRY . I. L. R., 12 Mad., 43
See FISHERY, RIGHT OF. I. L. R., 16 Bom., 338

See POSSESSION—ADVERSE POSSESSION. I. L. R., 16 Bom., 338
See CASES UNDER PRESCRIPTION. See CASES UNDER RIGHT OF WAY.

Before the Limitation Act of 1871 no precise time had been laid down as sufficient to create a right of user.

USER—continued.

See MUTUOK KAM BAKSH v. HARRIDAR MANDAR . 5 B. L. R., 174; 13 W. R., 440
KISTO MOHUN MOOKERJEE v. JUGGURNATH ROY JOGGER . 11 W. R., 236
HURU SOONDURER DEBIA v. RAM DHUN BHUTTA-CHANDER . 7 W. R., 276
1. Proof of right of user—"All along" or "from before"—A user "all along" or "from before" does not necessarily prove a right. Its existence must be proved from a time from which the right would be gained or presumed to have been gained. MOOKTARAK BHUTTAACHANDER v. HURRO CHANDER ROY . 7 W. R., 1

2.

Right to outlet for water—Easement.—In a suit to close up an outlet of water opened by the defendant, the lower Appellate Court found that the "outlet, or seuch" was used (barabar) all along, and that therefore the defendant had a right of user. Held that an enjoyment for at least twelve years is necessary to create a right by user, and that user by the defendant for that period at least had been found. KARTIK CHANDER SINKAR v. KARTIK CHANDRA DEY . 13 B. L. R., A. C., 166; 11 W. R., 522

3.

Use for many years.—In a suit for a declaration of the right of user over the water of a tank, which right was used over the evidence of witnesses adduced by plaintiff, from the finding of the lower Appellate Court, that plaintiff had used the water for many years, was held to be sufficient to prove a continuous and uninterrupted user on the part of the plaintiff. TOOLSIEE DOS KOBBERAT v. BHAYRUB LALL DEWARER . 18 W. R., 311

4.

Ancient and uninterrupted right—Easement.—A party claiming the right of user by prescription over the property of another must show not only that the right has existed from ancient days, but also that it has been exercised as of right, and has not been interrupted. MATIK JAVAD-UL-HUQ v. RAM PRASAD DAS . 3 B. L. R., A. C., 281
HERALAT KOOR v. PURMESSUR KOOR . 15 W. R., 401

5.

Interruption of right of easement.—The mere fact of user for any number of years will not be sufficient to confer a right, if the user be from time to time interrupted by the owner resuming, as occasion may require, the exclusive use of his land. In such a case the user will be treated as permissive merely, and not as the exercise of a right. AVUKHOX COOLAR CHUCKRABORTY v. MOTLAH NOBER NOWAZ . 13 W. R., 449

6.

Wrongful interruption—Acquisitiveness.—Wrongful interruption does not destroy a right of user where steps are immediately taken to assert the right; but if this is not done for a length of time, acquiescence may safely be presumed. HERALAT KOOR v. PURMESSUR KOOR . 15 W. R., 401

DEED—concluded

7. **Letting house to tenant**—Where a right of user of a drain or passage is incident to a house, that right is not affected by the owner of the house letting the house to a tenant and the house is a leased house.

6 W. H., 314

Long lease by tenant

Units of a plot of their landlord's land as a leasehold

Presumption—On evidence that a tenant has for a great number of years used a particular piece of the landlord's land along with other tenants as a leasehold, it is presumed to be so.

Right to use the plot of land for that purpose was part of the contract of tenancy *Uth Singh v. Datt & Bhagat*

Uth Singh v. Datt & Bhagat, 1 L. H., 184, distinguished

1 L. H., 184, 185, distinguished

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VACATION

Closing of Court for

See Appeal to Privy Council—Practitioner and Practitioner—Ties for Appeal

Practitioner

1 L. H., 184, 185, distinguished

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1. SUITS—continued.

4. *Valuation for purposes of jurisdiction—Court Fees Act.*—The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. *DAYACHAND v. HEMCHAND DHARAMCHAND* [I. L. R., 4 Bom., 515]

5. *Jurisdiction of suits.*—*Mad. Regs. VI of 1816, s. 11, and III of 1833.*—The valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by s. 11, Regulation VI of 1816, and Regulation III of 1833, and not in that prescribed in the Stamp Acts. *THIAGARAJA MUDALI v. RAMANUJA CHARI, CHINNASAMI CHETTI v. NAVAPPA SASTRY, JUTHA VENKATARAYADU v. JUTHA KAMAMMA* [I. L. R., 6 Mad., 151]

6. *Court Fees Act, s. 12—Class of suit in which particular suit ranks.*—S. 12 of the Court Fees Act, which makes the decision of a Court in which a plaint or memorandum of appeal is filed final on questions relating to valuation for the purpose of determining the amount of any fee chargeable does not affect a question as to the class of suits in which a particular suit ranks. *ANNAMALAI CHETTI v. CHITTE* [I. L. R., 4 Mad., 204]

7. *Court Fees Act, s. 12—Non-payment of sufficient Court-fee.*—S. 12 of the Court Fees Act (VII of 1870) applies merely to the valuation of property for the purpose of calculating the Court-fee when there is no question as to the article of the schedule of the Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended that the property has been wrongly valued, but that the relief has been improperly estimated by putting it under a wrong article in the schedule of the Act. It does not contemplate a case on which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. See *Ajoodhya Pershad Singh v. Gunga Pershad, I. L. R., 6 Cal., 249*; *6 C. L. R., 567. OMRAO MIRZA v. JONAS* [12 C. L. R., 148]

8. *Jurisdiction—Market value of subject-matter, Mode of computing the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market value of the subject-matter of the suit, and not by the special rules applicable to valuation laid down in Act VII of 1870.* *NANHOON SINGH v. TORANNE SINGH* [12 B. L. R., 113; 20 W. R., 33]
[12 B. L. R., 115 note; 18 W. R., 109]
JEEBRAJ SINGH v. INDERJEET MAHTOON
CHUNDER NATH BHUTTAOCHARYA v. BINDABABU SHAMA 25 W. R., 39.

COL. 1. SUITS 9275
2. APPEALS 9305

See Appeal—Acts—Court Fees Act.
[I. L. R., 2 Bom., 145, 219]

See Appeal to Privy Council—Cases in which Appeal lies or not—Valuation of Appeal.

See Cases under Appellate Court—Rejection on Admission or Evidence Admitted or Rejected in Court Below—Valuation of Suit.

See Costs—Special Cases—Valuation of Suit.

See Cases under Court Fees Act.

See Jurisdiction—Question of Jurisdiction—Wrong Exercise of Jurisdiction. [I. L. R., 8 Bom., 31]

See Records Act, s. 27. [5 B. L. R., 305]

See Special or Second Appeal—Other Errors or Law or Procedure—Valuation of Suit.

1. Question of valuation—Procedure.—Whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial. *JOTARA DASSEE v. MAHOMED ALOMAROCK* [I. L. R., 8 Cal., 975; 11 C. L. R., 399]

2. Computation of value—Stamp duty—Valuation of subject-matter for purpose of determining jurisdiction.—The valuation of a suit for the purposes of stamp duty, and the valuation of the subject-matter of the suit for the purpose of determining the jurisdiction of the Court in appeal, are two different things. The value of the suit for the purposes of stamp duty is fixed by certain rules which determine an artificial value for those purposes. The value of the subject-matter of a suit on appeal, on which depends the jurisdiction of the several grades of civil suits, is the actual value of the property in litigation. *AVUKHIL CHANDER SEN ROY v. MOHINI MOHUN DASS* [I. L. R., 5 Cal., 489; 4 C. L. R., 491]

3. Valuation for purposes of jurisdiction.—Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause. The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence, should govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation. *JAG LAL v. HAR NARAIN SINGH* [I. L. R., 10 All., 524]

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VALUATION OF SUIT.

1. SUITS.

1. ——— Question of valuation—*Pro-
cedure*.—Whether or not a suit has been properly
valued is a preliminary question which ought to be
disposed of before the case goes to trial. JOYTARA
DASSEE v. MAHOMED MOBARUOK

[I. L. R., 8 Calc., 875; 11 C. L. R., 399]

2. ——— Computation of value —
Stamp duty—*Valuation of subject-matter for pur-
pose of determining jurisdiction*.—The valuation of
a suit for the purposes of stamp duty, and the valua-
tion of the subject-matter of the suit for the purpose
of determining the jurisdiction of the Court in
appeal, are two different things. The value of the
suit for the purposes of stamp duty is fixed by certain
rules which determine an artificial value for those
purposes. The value of the subject-matter of a suit
on appeal, on which depends the jurisdiction of the
several grades of civil suits, is the actual value of
the property in litigation. AUKHIL CHUNDER SEN
ROY v. MOHINY MOHUN DASS

[I. L. R., 5 Calc., 489; 4 C. L. R., 491]

3. ——— *Valuation for
purposes of jurisdiction*.—Questions of jurisdiction,
whether with reference to the nature of the suit or
with reference to the pecuniary limits of the claim, are
matters to be governed by the statements contained in
the plaint in the cause. The valuation of the claim as
preferred by the plaintiff, and not as set up by the
plea in defence, should govern the action, not only
for the purposes of the original Court, but also for
the purposes of appeal, and indeed throughout the
litigation. JAG LAL v. HAR NARAIN SINGH

[I. L. R., 10 All., 524]

VALUATION OF SUIT—continued.

1. SUITS—continued.

4. ——— *Valuation for
purposes of jurisdiction—Court Fees Acts*.—The
valuation of suits for the purpose of jurisdiction is
perfectly distinct from their valuation for the fiscal
purpose of Court-fees. Therefore Court Fees Acts,
which are fiscal enactments, are not to be resorted to
for construing enactments which fix the valuation
of suits for the purpose of determining jurisdiction.
DAYACHAND v. HEMOCHAND DHARAMCHAND

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5. ——— *Jurisdiction of
Munsif—Mad. Regs. VI of 1816, s. 11, and III of
1833*.—The valuation of the matters of litigation for
the purpose of determining the jurisdiction of Munsifs
is to be made in the mode prescribed by s. 11, Regu-
lation VI of 1816, and Regulation III of 1833, and
not in that prescribed in the Stamp Acts. THIAGA-
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6. ——— *Court Fees Act,
1870, s. 12—Class of suit in which particular suit
ranks*.—S. 12 of the Court Fees Act, which makes
the decision of a Court in which a plaint or memo-
randum of appeal is filed final on questions relating
to valuation for the purpose of determining the
amount of any fee chargeable does not affect a
question as to the class of suits in which a particular
suit ranks. ANNAMALAI CHETTI v. CLOETE

[I. L. R., 4 Mad., 204]

7. ——— *Court Fees Act,
1870, s. 12—Non-payment of sufficient Court-fee*.—
S. 12 of the Court Fees Act (VII of 1870) applies
merely to the valuation of property for the purpose
of calculating the Court-fee when there is no question
as to the article of the schedule of the Act with
reference to which the valuation is to be made, and
does not apply to a case in which it is contended that
the property has been wrongly valued, but that the
relief has been improperly estimated by putting it
under a wrong article in the schedule of the Act.
It does not contemplate a case on which the Court
refuses to hear a suit on the ground that a sufficient
Court-fee has not been paid. See *Ajoodhya Pershad
Singh v. Gunga Pershad*, I. L. R., 6 Calc., 249;
6 C. L. R., 567. OMRAO MIRZA v. JONES

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8. ——— *Jurisdiction—
Market value of subject-matter, Mode of computing
—Court Fees Act (VII of 1870), ss. 6 and 12*.—For
the purpose of determining the question of jurisdic-
tion, the valuation of a suit should be computed ac-
cording to the market value of the subject-matter of
the suit, and not by the special rules applicable to
valuation laid down in Act VII of 1870. NANHOON
SINGH v. TOFANEE SINGH

[12 B. L. R., 113; 20 W. R., 33]

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VALUATION OF SUIT—continued

1 SUITS—continued.

for purposes of jurisdiction on KHUSHALCHAND MEE CHAND & NAGINDAS MOTICHAND

[I L R., 12 Bom, 675

24 — Adoption, Suit to set aside

—*Suit by reversioner—Jurisdiction*—For the purpose of determining the jurisdiction over a suit by a reversioner to set aside an adoption, the loss which would accrue to the adopted person, should the adoption be declared invalid, is the measure of the value of the subject matter of the suit KESHAVA SANKARACHA & LAKSHMINADAYAN

[I L R., 8 Mad, 182

25 — Court Fees Act,

7—*Suits Valuation Act (VII of 1857), ss 4, 10*—The value, for the purposes of jurisdiction, of a suit to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside but the value put upon his claim by the plaintiff Keshava Sankaracha & Lakshmi Narayana, I L R., 6 Mad, 192, dissenting from SINGO DENI RAM & TELANI RAM

[I L R., 15 All, 378

26. — Annuity, Suit for declaration of right to—Act XXI of 1867—Stamp Act, 1862, sch A, cl 2—In a suit for a declaration of right to an annuity (varshmaan) it was held that the stamp for the petition of special appeal should be regulated by the market value of the annuity, and that *prima facie* ten times the amount of the annuity might be assumed to be its market value as enacted for analogous agreements by s 2, sch A, Act X of 1862 NARAYANACHARYA & STANLEY RAYA CHARYA

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27. — Attachment, Suit to set aside—*Suit by trustee's deed given by insolvent for benefit of creditors*—The valuation for stamp duty of a suit brought by the trustees of an assignment by an insolvent trader for the benefit of his creditors to set aside an attachment by an execution creditor should be calculated on the value of the lien claimed by the judgment creditor STEPHENSON & MAC CARTHER

3 Agri, 104

28 — *Suit under Civil Procedure Code, 1882, s 253—Stamp—Possession—Court Fees Act, VII of 1857 sch II, art 17, cl 1*—When a party prefers a claim or makes any objection to the attachment of any property in execution of a decree but fails to establish it, and brings a suit under s 253 of the Code of Civil Procedure (Act XIV of 1882) to establish his right to the pro-

in such a suit to be awarded possession in *Popants v. Anan Singh, Judgments for 1881, p 121* followed *Ganapalgar Gura Bholegar v. Ganapalgar, I L R., 3 Bom, 230*, distinguished. DHONDHO BAKHAM & GOVIND NADAJI

I L R., 11 Bom, 20

29 — Attachment, Suit to set aside order removing—*Court Fees Act, VII of*

VALUATION OF SUIT—continued

1. SUITS—continued

1870, ss II and 12, and sch II, art 17, cl 1—*Valuation by subordinate Court—Suit to re-establish*

judgment debtor to the property from which the attachment had been removed, and to get the summary order to remove the attachment set aside.—*Held* that the proper stamp on a plaint if that kind was Rs 10 under s 6 and sch II, art 171, of the Court Fees Act, VII of 1857 VITAL KRISHNA & BAL KRISHNA JAGARAYAN I L R., 10 Bom, 610

30 — Award, Suit to carry out.

A suit to carry out an arbitration award need not be valued KHODA BEKSH & MOWLA BRESHA

[14 W. R., 255

31 — Award, Application to file

—*Civil Procedure Code 1882 s 620*—The proper stamp on an application to file an award is Rs 10

C PALIT BHAGUT & MOHON BHAGUT

[13 C L R., 171

32 — Charge on property, Suit to establish—*Madras Civil Courts Act 1857—Subject matter of suit*—For the purposes of jurisdiction (Madras Civil Courts Act 1857) the subject-matter of a suit to establish the validity of a charge upon property is when the property is in excess of the charge, the amount of the charge, when the charge is in excess of the property, the value of the property KRISHNAYANA CHARYA & SIVINAYANA ATYANGAR

I L R., 4 Mad., 330

33 — Damages, Suit for—In determining the jurisdiction of the Court in a suit for damages, the amount claimed and not that eventually found due, must be taken at the valuation JOR DOOROA DASSEE & VANICE CHAND LADOO

[10 W. R., 248

34 — Declaratory decree, Suit for—*Suit to establish right to attach property*

Held that, in the case where a person has preferred a claim to property attached in the execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property the value of the subject matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree Second Appeal No 520 of 1876, decided the 26th May 1876, followed GULZARI LAL & JADAV RAI

[I L R., 11 All, 700

35. — *Suit for declaration that property is liable to sale in execution of decree—Jurisdiction*—In a suit to have it declared that certain property valued at Rs 400 was liable to sale in execution of the plaintiff's decree for Rs 1,200, *Held* that in this case the value of the property determined the jurisdiction, that it was immaterial

VALUATION OF SUIT—continued.

1. SUITS—continued.

must be regarded as the subject-matter of the suit, and the value of the suit within the meaning of ss. 19 and 21 of Act XII of 1887 must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realized by the sale of property in execution of the decree. *Gulzar Lal v. Jadann Rai*, I. T. R., 2 All., 199; *Durga Prasad v. Rachla Kuar*, I. T. R., 9 All., 140; *Krishnama Chariar v. Srinivasa Aiyangar*, I. T. R., 4 Mad., 339; and *Moodhusund Koor v. Rakhal Chunder Roy*, I. T. R., 15 Cal., 104, distinguished. *Alahab Singh v. Behari Lal*, I. T. R., 13 All., 320, and *Madho Das v. Bamji Patak*, I. T. R., 16 All., 286, referred to. *Dwarak Das v. Kameshar Prasad*, I. T. R., 17 All., 69.

39. *Court Fees Act, s. 12, and sch. II, art. 17, cl. 3—Consequential relief—Appeal—Civil Procedure Code, 1859, s. 246.—S. 12 of the Court Fees Act prohibits appeals on questions relating to valuation for the purpose of determining the amount of a fee, but does not prevent a Court of appeal from determining whether or not consequential relief is sought in a suit, so that it may determine under what class of cases the suit falls for the purposes of the Court Fees Act. A suit by a person against whom an order has been made, under s. 246 of Act VIII of 1859, disallowing his claim to the attached property, need not be valued according to the value of the property, but can be brought on a stamp of Rs. 10, under Act VII of 1870, sch. II, art. 17 (iii). *Chaita v. Ram Dyal*, I. T. R., 1 All., 360.*

40. *Suit to stay but not proceedings under Beng. Reg. XIX of 1814, after partition by private arrangement.—An allottee, under a private partition, sued to say subsequent partition proceedings brought under Regulation XIX of 1814, and to have his possession commanded. The defendants objected to the valuation of the suit and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the revenue authorities. Held that such a suit should be considered to be one for a declaratory decree or for something in the nature of an injunction, and that therefore the plaint should not be stamped according to the value of the entire estate. *Joykarn Roy v. Lait Bahadur Singh*, I. T. R., 8 Cal., 126; 10 C. I. R., 146.*

41. *Suit for declaration of title to paid offices—Withdrawal of claim to some of the offices—Office still claimed involving the right to the others.—In a suit to declare title to four paid offices in a temple, the plaintiffs asked that the issues with regard to three of them should not be tried, but on cross-examination asserted right to them. It was found that the fourth office carried with it the right to the other three. Held that the plaintiffs were not shown to have relinquished their claim on the three offices for the purposes of the suit, but that, even if they had done so, the value of all*

VALUATION OF SUIT—continued.

1. SUITS—continued.

that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that the case was therefore triable by the Munsif. *Gulzar Lal v. Jadann Rai*, I. T. R., 2 All., 799, distinguished. *Durga Prasad v. Rachna Kuar*, I. T. R., 9 All., 140.

36. *Bengal Civil Courts Act (VI of 1871), s. 20—Value of the subject-matter in dispute—Civil Procedure Code (Act XIV of 1852), s. 283—Attached property, suit to establish right to.—In suits brought under s. 283 of the Civil Procedure Code to test the question whether a property which has been attached in execution is liable to pay the claim of the creditor, the amount which is to settle the jurisdiction of the Court is the amount which is in dispute, and which the creditor would recover if successful, viz., the amount due to him, and not the value of the property attached, unless the two amounts happen to be identical. *Janki Das v. Badri Nath*, I. T. R., 2 All., 668; *Gulzar Lal v. Jadann Rai*, I. T. R., 2 All., 799; *Krishnama Chariar v. Srinivasa Aiyangar*, I. T. R., 4 Mad., 339; and *Dagachand Nemchand v. Hemchand Dharamchand*, I. T. R., 4 Bom., 515, followed. *Moodhusund Koor v. Rakhal Chunder Roy*, I. T. R., 15 Cal., 104.*

37. *Suit by claimant to attached property—Court Fees Act (VII of 1870)—Civil Procedure Code (1852), ss. 278 and 283.—Where a claimant whose objection under s. 278 of the Code of Civil Procedure has been disallowed, brings a suit and makes the judgment-creditor, who was trying to execute the decree, the sole defendant to the suit, a claim for a declaration that the property under attachment was the plaintiff's property and not liable to attachment in execution of the decree of the defendant, is a claim for only one declaration, and for such purposes and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment or that the property is the plaintiff's as against the defendant's right to attach, and that the order of attachment should be cancelled. But where the person objecting under s. 278 of the Code brings his suit and makes not only the execution-creditor in the attachment proceedings, but also the judgment-debtor in those proceedings, parties to the suit, and asks for a declaration of the plaintiff's title to the property under attachment as against the judgment-creditor, and also asks for a declaration in denial of the judgment-creditor's right to bring that property to sale in execution of the judgment-creditor's decree, there are two substantial declarations asked for. *Moti Singh v. Kavanshi*, I. T. R., 16 All., 308.*

38. *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), ss. 19 and 21—Suit claiming property under the Civil Procedure Code, s. 283.—When in a suit under s. 283 of Act XIV of 1882 the claimant-objector makes the judgment-debtor or his representative a party as defendant to the suit, the property attached*

VALUATION OF SUIT—continued.

1. SUITS—continued.
The four offices must be taken for the purpose of jurisdiction SYRMAA & SYRMAA
[I. R. R., 10 Mad., 371]

42. Suit to obtain a declaratory decree—Suit to set aside a summary judgment of a decree was filed in respect of each of the reliefs prayed DUDHA LAXMA & MANAY DAS [I. R. R., 11 All., 385]

43. Foreigners' claims—
Held that the Court fee payable on the plaint and excess of the necessary jurisdiction of a District

GAHARATI & CHANAN [I. R. R., 12 Mad., 233]
that the plea of res judicata failed for declaration for the purposes of jurisdiction, the value of a suit for a mere declaratory decree must be taken as what it would be if the suit were one for possession of the property regarded with which the plaintiff seeks to have his title declared

44. Madras Civil Courts Act (Mad Act III of 1873), s. 12—Suit for declaration of membership of a landed plantation for the purposes of jurisdiction—The plaintiff alleging that he was a member of the defendants' family, sued in a Subordinate Court for a declaration that he was a member of it, adding no prayer for consequential relief. It appeared that the total property exceeded Rs. 500 in value, computed as on an equal division, was less than Rs. 500. The subordinate Judge held that the suit was within the jurisdiction of a District Munsif and rejected the plea. Held that the value of the subject matter of the suit was the value of the whole landed property, and not the value of what the plaintiff's share would have been if sold therefore was wrong and should be set aside. GANAPATHY CHETTI & KANAKAMMA KOTA [I. R. R., 15 Mad., 501]

45. Illegal Tenancy Act, s. 149—Suit by third party claiming rent paid into Court in remission. Nature of—Title suit—An eviction suit—A suit by a third person under Act (3) of 189 of the Bengal Tenancy Act is not a tenancy, and need not be stamped as such. For TOTTENHAM, s. 2—such suit is in the nature of a suit for an injunction under the Specific Relief Act or

VALUATION OF SUIT—continued.

1. SUITS—continued.
the a declaratory suit, JAYARAMA DAS & PHOTAP GHOSE [I. R. R., 14 Cal., 637]

46. Suit to establish right by reversal of deeds—When a plaintiff only sues for declaration of his title to certain lands on reversal of the holdings said to have been illegally executed by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds. SURESH GHOSHAN SIKHAN & BHOORAM PHOTAP SIKHAN [W. R. R., 1884, 217]

47. Plant manuf.—
Plant manuf.—
Cementing steamship—Court fees Act (I of 1870), s. 12—The law allows a plaintiff in some cases to rectify a mistake as to stamp duty, but this privilege is subject to qualification, and does not exist where the relief to be granted is in effect a better distinct from that originally sought. In such a case, the plaintiff should not be allowed to put an additional stamp as his plaint. Where a plaintiff sued on a stamp of Rs. 10 for a declaration of his title to land worth Rs. 10,000, on the plea and content his suit into one for possession, GOKULADASS & NARAYAN & AGRAWAL [I. R. R., 1 Mad., 40]

48. —
(I of 1870), s. 4, and Act II, art. 17, cl. 3 and 5—Jurisdiction—Madras Civil Courts Act (I of 1873), s. 21—A subordinate Judge of the 2nd class has no jurisdiction to entertain a suit for the declaration of the plaintiff's title where the property in respect of which the declaration is sought exceeds Rs. 500 in value. The law may lay down, for purposes of revenue, certain rules for the valuation of suits, but such valuation cannot be accepted as a criterion of the actual amount or value of the claim, in which the jurisdiction of a Court depends. Whether a suit be merely to obtain a declaratory decree or to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff in the value of the subject matter. That MANICK & BOLLAKSHI CHAKRA [I. R. R., 1 Bom., 638]
49. Court fees Act—
paid in respect of each of the allegations in question. BATHACHARYA LITLAL & KANAKAMMA KOTA [I. R. R., 18 Mad., 460]
50. Court fees Act—
(I of 1870), s. 2, cl. 3 (c), art. 17, cl. (iii)—
—Suit for a declaration that a decree obtained by defendants against plaintiff was null and void—
Directors for declaration without court, mental relief—

VALUATION OF SUIT—continued.

1. SUITS—continued.

plaintiffs specified in their plaint, as the reliefs sought by them,—(1) That it be declared by the Court that the property mentioned at foot is the joint ancestral property of the plaintiffs and not liable to attachment and sale in execution of the decree of the defendant 4, dated 4th December 1883, against the defendant 1. (2) That the costs of the suit be also awarded by the decree. The suit is valued with reference to the amount of the decree and the value of the property at Rs6,000. (3) That any other relief which the Court may think the plaintiffs entitled to may also be granted. *Held*, that the suit should be deemed a suit for one declaration decree only without consequential relief, and that consequently a Court-fee of Rs10 was sufficient. **GORDH NATH TIWARI v. GANESH MATH TAVARAN** [I. L. R., 18 AII., 389]

55.—*Suit to compel trustees to account*—*Court Fees Act, sch. II, art. 17, cl. (vi)*.—The mere fact that the plaintiffs in a suit under s. 539 of the Code of Civil Procedure may ask for an account to be taken from the trustees and that the trustees may be compelled to refund moneys alleged to have been misappropriated by them, does not take the case out of the purview of art. 17, cl. (vi), of the second schedule to the Court Fees Act, 1870, and render the plaintiffs liable to pay an *ad valorem* Court-fee on that part of their plaint. **Thakur v. Brahma Narain**, I. L. R., 19 AII., 60, referred to. **GIRDHARI LAL v. RAM LAL** [I. L. R., 21 AII., 200]

56.—*Sale in execution of decree—Suit by unsuccessful auction-purchaser for a declaration of right and for possession—Civil Procedure Code, 1882, s. 535—Court Fees Act (VII of 1870), s. 7*.—A purchaser of property at a sale held in execution of a decree obtained at a sale held in execution of a decree obtained formal possession, but was resisted in obtaining actual possession by a person, who claimed to be the owner in possession of the property. An application made by the auction-purchaser under s. 535 of the Code of Civil Procedure was rejected, and the auction-purchaser accordingly filed a suit against the person in possession claiming a declaration of his right to the property, and to be put in actual possession thereof. *Held*, that such a suit was properly stamped with a Court-fee stamp of Rs10. **Dhondo Satharam Kulkarni v. Govind Babaji Kulkarni**, I. L. R., 9 Bom., 20, referred to. **Pirya Das v. VIJAYAT KHAN** [I. L. R., 22 AII., 384]

57.—*Deed, Suit to set aside—Suit for cancellation of bond—Value of subject-matter of suit—Jurisdiction*.—The value of the subject-matter of a suit for the cancellation of a bond is to be determined with reference only to the principal amount, and not that amount together with the interest payable thereon when the suit is instituted. **GUTHAR RAI v. MANMATH LAL** [I. L. R., 6 AII., 71]

58.—*Appeal—Suit for cancellation of a document—Jurisdiction*.—The plaintiffs sued for the cancellation of a bond for the

VALUATION OF SUIT—continued.

1. SUITS—continued.

—A suit in which the only prayer is to have a decree set aside as null and void is a suit for a declaratory decree without consequential relief, and art. 17, cl. 3, and not s. 7, cl. 4, of the Court Fees Act (VII of 1870), is applicable to it. **SUMNATH SAGAJRAO KHAN-DEKAT v. SMITH** [I. L. R., 20 Bom., 736]

51.—*Court Fees Act (VII of 1870), sch. II, art. 17, cl. (vi)—Civil Procedure Code, s. 539—Prayer for appointment of plaintiffs as trustees*.—A prayer in a plaint purporting to be a plaint under s. 539 of the Code of Civil Procedure that the plaintiffs themselves may be appointed trustees is not a prayer for possession requiring to be stamped at the value of the trust property, but is a prayer for relief falling within art. 17, cl. (vi), of the second schedule to Act VII of 1870. **Sonachala v. Munika**, I. L. R., 8 Mad., 516; **Delroos Banoo Begum v. Asghar Ally Khan**, 15 B. L. R., 167; and **Omrao Mirza v. Jones**, I. L. R., 10 Cal., 539, referred to and distinguished. **THAKUR v. BRAHMA NATH** [I. L. R., 19 AII., 60]

52.—*Court Fees Act (VII of 1870), sch. II, art. 17, cl. (vi)—Suit to remove a trustee of a religious endowment—Sensible*—That a suit, under s. 14 of Act XX of 1863, against the superintendent of a religious endowment for misfeasantance is a suit which, for the purpose of payment of Court-fees, falls within art. 17, cl. (vi), of the second schedule of Act VII of 1870. **Delroos Banoo Begum v. Asghar Ally Khan**, 15 B. L. R., 167; **Sonachala v. Munika**, I. L. R., 8 Mad., 516; and **Omrao Mirza v. Jones**, I. L. R., 10 Cal., 539, referred to. **MUHAMMAD SIRAJ-U-D-DIN v. IMAM-U-D-DIN** [I. L. R., 19 AII., 104]

53.—*Court Fees Act (VII of 1870), s. 7, cl. 4—Suit for declaration of right and for injunction*.—A suit for a declaration of right and for an injunction falls under s. 7, cl. 4, sub-cls. (c) and (d), of the Court Fees Act (VII of 1870). The valuation of the relief sought in such a suit rests with the plaintiff, and not with the Court. A suit B and C (1) for a declaration of his title to certain property, and (2) for an injunction restraining C from paying, and B from receiving, an allowance of Rs2,400 a year out of the income of the property in dispute. A valued each of the reliefs sought at Rs130, and affixed a Court-fee stamp of Rs20 to the plaint. The Court of first instance rejected the claim for the injunction sought, holding that the claim for the injunction sought should have been valued at ten times the annual allowance paid by C to B, as provided by s. 7, cl. 2, of Act VII of 1870. On appeal to the High Court, *Held*, that the suit fell under s. 7, cl. 4, sub-cls. (c) and (d), of the Court Fees Act, and the plaintiff had a right to put his own valuation on the relief sought. **SARDAR-SINGHJI v. GANPATISINGHI** [I. L. R., 17 Bom., 56]

54.—*Declaration sought that certain property was joint ancestral property and not liable to attachment in execution of a certain decree—Court Fees Act (VII of 1870), sch. II, art. 17, cl. 3, and s. 7, cl. 4*.—The

VALUATION OF SUIT—continued.

I. SUITS—continued.

of Court-fees and of jurisdiction is the value of the subject-matter of the suit, that is to say, of the tenant-right, not of the land itself nor of merely one year's rent. *Raj Raj Tewari v. Girshadan Bhagat* I. L. R., 15 All., 68.

69.

*Suit to have a lease to set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of buildings erected thereon—Court Fees Act—Bengal Civil Courts Act, ss. 20, 22.—Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside, and to have the building erected on such land by the lessees demolished, on the ground that such lease had been granted without their consent. They valued the relief sought at ₹100. The value of the buildings of which they sought demolition was ₹3,000. B sued claiming *inter alia* possession of certain land and to have certain buildings erected thereon by the defendant demolished. Held, with reference to the above-mentioned suits, that in estimating their value for the purposes of the Court Fees Act, 1870, or of the Bengal Civil Courts Act, 1871, the value of the buildings which might have to be demolished should not be taken into account. *Jogai Kishor v. Tate Singh*, *Bhadeshwar Chaudhary v. Nandu* I. L. R., 4 All., 320.*

70. *Emoluments attached to office, Suit for—Court Fees Act, 1870, s. 7, cls. 2, 4—Claims for future emoluments—Jurisdiction—Madras Civil Courts Act, 1873, s. 12—Portion of claim struck out and plaint returned for presentation to inferior Court.—In a suit filed in the Court of a Subordinate Judge, the plaintiff prayed, *inter alia*, for a decree for the payment, annually, of the emoluments attached to a certain office, or their value at a rate stated in the plaint. This portion of the claim he valued, under cl. 2 of s. 7 of the Court Fees Act, at ten times the amount of the value claimed for one year. The value of the claim thus stated exceeded the pecuniary limit of the jurisdiction of the District Munsif. The Subordinate Judge held that this portion of the claim was not actionable, inasmuch as the right to the emoluments was conditional upon services to be rendered, and did not fall under cl. 2 of s. 7 of the Court Fees Act, and not being a fixed sum payable periodically, and therefore he held that the plaint was improperly valued, that the suit was not within his jurisdiction, and that the plaint should be returned to be presented to the proper Court. Held that this order was right. *Krishnan v. Ravi Varma* I. L. R., 8 Mad., 384.*

71. *Interest—Court Fees Act (VII of 1870), s. 7—Claim for interest from institution of suit until payment—Future mesne profits.—No additional stamp is required on account of the claim for interest from institution of the suit until payment. It stands on the same footing as future mesne profits, which do not fall under s. 7 of*

VALUATION OF SUIT—continued.

I. SUITS—continued.

the Court Fees Act (VII of 1870). *Vithal Hari Athavale v. Govind Vasdeo Thosar* I. L. R., 17 Bom., 41.

72. *Instalment-bond, Suit on.—The stamp on a plaint on an instalment-bond should be estimated, not on the amount of the whole bond, but on the amount claimed in the suit. *Suroto Bhalla Dossa v. Jajeeveddy Khan* [4 W. R., S. C. C. Ref., 12]*

73. *Khoti estate, Suit for recovery of—Act XXVI of 1867, sch. B, cl. 11—Amount of assessment.—Held that a khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and that a suit for its recovery should be assessed at eight times the annual assessment under Act XXVI of 1867, sch. B, art. 11, note (a), Sp. R. Rule 1 for the Bombay Presidency. *Ex-parte Vithal alias Gopal Govesh Bivalkar*. 4 Bom., A. C., 148.*

74. *Land, Suit for—Court Fees Act (VII of 1870), s. 7, art. 5, proviso—Stamp—Construction and applicability of the proviso—*Talukdars' jumma—Remission.—Per West and Nabhayal, J.J.*—The proviso to art. 5 of s. 7 of the Court Fees Act (VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency, not only for the comparatively rare cases of land forming part but not a definite share of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisal made in order to show the proper amount of the land-tax may be regarded as a remission. In the case of a talukdari village, the proprietor of which had, under a settlement with Government for a period of twenty-two years, agreed to pay a fixed annual jumma, or lump assessment instead of the full survey assessment for the whole village.—Held by a majority of the Full Bench that the difference in amount between the jumma and the full survey assessment was a remission, and therefore a suit for possession of lands in this village was to be valued according to cl. (3) of the proviso to art. 5 of s. 7 of the Court Fees Act (VII of 1870). *Per Birdwood, J.*—The remission contemplated by cl. (3) of the proviso "is an express remission, and not a mere difference in amount between the actual assessment payable by a talukdar and the survey assessment." The three clauses of the proviso seem to apply only to lands which have been subjected to a survey settlement as ordinarily understood and legally provided for in the Bombay Presidency; the first clause being applicable to lands settled for a period not exceeding thirty years, the second to lands settled for a longer period or permanently, and the third to lands on which the whole or a part of the survey assessment has been expressly remitted. The talukdars are not landlords. They are landholders liable to pay a land-tax, but not under a survey settlement, such as is applicable*

VALUATION OF SUIT—continued.

1. SUITS—continued.

to lands for which provision seems to have been specially made in the proviso to art 6 of s. 7 of the Court Fees Act. No part of the proviso therefore applies to a suit for the possession of lands in a talukdars' village. Such a suit should be valued according to cl (d) of art 3 of s. 7 of the Court Fees Act. *Act XX of 1873, s. 7, cl. (d).*

Act XX of 1873, s. 7, cl. (d).

75. *DAVARI MOUNSARI v. DAVARNAI MOUNSARI*
I. L. R., II Bom., 550 note

76. *Act XX of 1873, s. 7, cl. (d).*

77. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

78. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

79. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

80. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

81. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

82. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

83. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

84. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

85. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

86. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

87. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

88. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

89. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

90. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

91. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

92. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

93. *MAJABAR TALUKDAR—MAJABAR TALUKDAR, 1873, s. 7, cl. (d).*

1 SUITS—continued.

VALUATION OF SUIT—continued.

79. *Act XX of 1873, s. 7, cl. (d).*

80. *Act XX of 1873, s. 7, cl. (d).*

81. *Act XX of 1873, s. 7, cl. (d).*

82. *Act XX of 1873, s. 7, cl. (d).*

83. *Act XX of 1873, s. 7, cl. (d).*

84. *Act XX of 1873, s. 7, cl. (d).*

85. *Act XX of 1873, s. 7, cl. (d).*

86. *Act XX of 1873, s. 7, cl. (d).*

87. *Act XX of 1873, s. 7, cl. (d).*

88. *Act XX of 1873, s. 7, cl. (d).*

89. *Act XX of 1873, s. 7, cl. (d).*

90. *Act XX of 1873, s. 7, cl. (d).*

91. *Act XX of 1873, s. 7, cl. (d).*

92. *Act XX of 1873, s. 7, cl. (d).*

93. *Act XX of 1873, s. 7, cl. (d).*

94. *Act XX of 1873, s. 7, cl. (d).*

95. *Act XX of 1873, s. 7, cl. (d).*

96. *Act XX of 1873, s. 7, cl. (d).*

97. *Act XX of 1873, s. 7, cl. (d).*

98. *Act XX of 1873, s. 7, cl. (d).*

99. *Act XX of 1873, s. 7, cl. (d).*

100. *Act XX of 1873, s. 7, cl. (d).*

VALUATION OF SUIT—continued.

I. SUITS—continued.

a suit for money, and should be valued, not at the principal debt, but the entire amount including interest. *KASHINATH BATHAL v. GANPATI AURI-TSHVAN JOSHI*. I. L. R., 18 Bom., 696

85. *Court Fees Act (VII of 1870), s. 7, cls. 5 and 9—Suit against mortgagee for recovery of mortgaged property.*

CI. 9, s. 7 of the Court Fees Act, applies not only to suits for redemption of mortgaged properties, but to all suits against the mortgagee for the recovery of the mortgaged properties, and whatever may be the actual amount due to the mortgagee, the Court-fee will always be upon the amount appearing in the bond. *KORAMAN SINGH v. NORMAN COCKRELL*. I. C. W. N., 670

86. *Partition, Suit for—Madras Civil Courts Act, s. 12—Jurisdiction—Subject-matter of suit.*—In suits for partition, the value of the property of which the plaintiff claims a share, and not the value of the share claimed, determines the jurisdiction of the Court under s. 12 of the Madras Civil Courts Act, 1873. *VEDINATHA v. SUBRAMANYA*. I. L. R., 8 Mad., 235

87. *Suit for partition of share of land.*—In a suit for ascertainment, partition, and delivery to the plaintiff, of a share of certain land, the suit should be valued at the amount of the value of the whole estate. *YDINATHA v. SUBRAMANYA*, I. L. R., 8 Mad., 235, followed. *NAGAMMA v. SUBBA*. I. L. R., 11 Mad., 197

88. *Court Fees Act (VII of 1870)—Suit for partition and for possession of share.*—The stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one on the value of the share. *BALVANT GANESH v. NANA CHINTAMON*. I. L. R., 18 Bom., 209

89. *Suit for partition of family property—Valuation for purposes of jurisdiction—Court Fees Act (VII of 1870), s. 7, cl. (iv) (b)—Suits Valuation Act (VII of 1887), s. 8.*—In a suit by a member of a joint Hindu family praying for a partition of the family property and for the delivery to the plaintiff of his share, the value of the suit for the purposes of jurisdiction is the amount at which the plaintiff values his share. *VELU GONDAN v. KUMARAVELU GONDAN*. I. L. R., 20 Mad., 289

90. *Suits Valuation Act (VII of 1887), s. 8—Jurisdiction of Subordinate Judge—Valuation of a suit for partition.*—In a suit for partition of certain property, the value of the whole property sought to be divided was over Rs. 5,000. Plaintiff valued his share at Rs. 250, and paid Court-fees on this amount. The suit was filed in the Court of a Subordinate Judge of the first class. *Held* that the value of the subject-matter of the suit could not be held to be more than Rs. 250, so that the suit ought to have been filed in the Court of the second class Subordinate Judge. *MOTIBAI v. HARIDAS*. I. L. R., 22 Bom., 315

94. *W. Provinces and Assam Civil Courts Act (XII of 1867), s. 21—Court Fees Act (VII of 1887), s. 7, cl. 4—Suits Valuation Act (VII of 1870), s. 7, cl. 8, and 11—Jurisdiction, Valuation for purposes of.*—For purposes of jurisdiction, the words "value of the original suit" in s. 21 of Act XII of 1887 are, in partition suits, to be taken to mean the

93. *Subject-matter of suit—Act XIV of 1869, s. 25.*—What *prima facie* determines the jurisdiction of a Court is the claim, or subject-matter of the claim, as estimated by the plaintiff; and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so notwithstanding a *bond fide* error in the estimate made by the plaintiff, but plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained, and which there is no reasonable ground for expecting to sustain. The subject-matter of a claim, within the meaning of s. 25 of Act XIV of 1869, is the specific thing sought by the plaintiff. In a partition suit, where the plaintiff seeks for a division and separate possession of his share in joint property, it is the share so claimed which is the subject-matter of the claim, and not the whole of the joint property which is sought to be divided. *LAKSHMAN BHATTAR v. BABAJI BHATTAR*. I. L. R., 8 Bom., 81

92. *Suit for division of lands according to established custom.*—A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be redistributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners. In 1851 of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in 1853 such decree, which clearly recognized the existence and validity of the custom, was affirmed on appeal. *Held* that the plaintiff need not pay an institution fee on the aggregate amount of the value of all the shares in the village, and that the stamp on the plaint need only be proportioned to the value of the property actually sued for. *VENKATASWAMI NAYAKKAN v. SUBBA RAO, SANKARA SUBBAYAN v. SUBBA RAO*. 2 Mad., 1

91. *Market value of property.*—The ordinary rule for assessing the hearing fee according to the market value of the property in suit is not applicable to a suit for partition, and the Court in each case ought to fix the amount of such fee. Generally speaking, the value of the suit is the difference between the value after partition of the plaintiff's share which he requires to be partitioned and the value of the same share not partitioned. *KIRITESH CHUNDER MITTAL v. ANNAI NATH DEB*. [3 C. L. R., 253

VALUATION OF SUIT—continued.

I. SUITS—continued.

value of the property in suit, and this is the

valuation by which the Court should be guided in

such suits. *Kirby Charn Miller v Adams & Co*

Deb, I T R, 8 Cole, 757 followed. The Court

held that a plaintiff should assign an arbitrary

value to the subject-matter of the suit, and the

provisions of the *Valuation Act* (VII of 1857),

as 7, 8, and 11, indicate that this was not the inten-

tion of the Legislature. *Doria v Mier Ayra*

Makray & Co Ayra

I T R, 17 Cole, 680

85.—The plaintiff brought a suit to have 33 items

of property partitioned. The plaintiff bore a Court-

stamp in partition

suit.—The plaintiff brought a suit to have 33 items

of property partitioned. The plaintiff bore a Court-

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Section 12

of decree for partition—Jurisdiction of Courts

s. 11—Suit by a purchaser of a site in execution

of decree for partition—Jurisdiction of Courts

s. 11—Suit by a purchaser of a site in execution

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of decree for partition—Jurisdiction of Courts

s. 11—Suit by a purchaser of a site in execution

of decree for partition—Jurisdiction of Courts

s. 11—Suit by a purchaser of a site in execution

VALUATION OF SUIT—continued.

1. SUITS—continued.

Act (VI of 1887), s. 8—Jurisdiction of Munsif.—In suits brought for the several shares of the plaintiff had been determined and an adjustment of accounts made,—*Held* (NORRIS and BARNARD, JJ., RAMPART, J., dissenting) that, under the provisions of s. 7, para. iv, cl. (f), of the Court Fees Act (VII of 1870), and s. 8 of the Suits Valuation Act (VII of 1887), the suits were properly brought in the Munsif's Court. *Laddoo Ramchand v. Revichand Dhari* and *I. T. R., 6 Bom., 143*, followed.

101. Possession, Suit for—Suits for auction-purchaser—Procedure.—In a suit for possession by an auction-purchaser, where plaintiff valued his claim at what he paid for the property,—*Held* that the valuation was *prima facie* not incorrect, and, until rebutted by evidence and the result of a proper inquiry, should be accepted as correct. If the valuation was doubted, an enquiry should have been instituted under Act XXVI of 1867. *SOOR-DRA v. RAM PROKASH SINGH*. 16 W. R., 5.

102. Suit after foreclosure—Court Fees Act, s. 7, cl. 9.—Where a suit for possession is brought after a decree for foreclosure has been obtained, the valuation of such a suit, in so far as the jurisdiction of the Court is concerned, is not to be calculated according to the scale laid down in the Court Fees Act, s. 7, cl. 9. *ABOLTA BAR DEBIA v. SHAMA CHURN ROSE*

103. Civil Procedure Code, 1859, s. 229, Procedure under—Fresh suit—Jurisdiction.—For the purpose of jurisdiction, a claim under s. 229 of Act VII of 1859 is a fresh suit and not a continuation of the suit in which the claim is made; so that where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim. *MUTTAMAT v. CHINNAM GOVINDAN*

104. Madras Civil Courts Act (III of 1873), s. 1—Jurisdiction—Suit to recover share of inheritance—Subject-matter of suit.—The plaintiff sued to be declared an heir to a deceased Mahomedan and to recover her share of the inheritance, the share claimed being less than Rs. 500, while the value of the whole estate exceeded that amount. *Held* that the suit was to be valued according to the share, and not according to the value of the whole estate, and the suit therefore was within the jurisdiction of a District Munsif. *KHANSA BIBI v. ABBA*

105. Suit for possession of share of estate and to set aside deed.—In a suit for possession of a share of an undivided estate, and to set aside a kotha by which the estate had been illegally alienated, plaintiff is not bound to

VALUATION OF SUIT—continued.

1. SUITS—continued.

106. Jurisdiction of title.—Where a suit is for recovery of possession (with mesne profits) of a certain portion of land, and for a declaration of right in respect of the remainder, its valuation should not include the value of the latter, which is only nominal, and requires a stamp of Rs. 10. *HARNO NATH BUTTACHAND v. HARVEY*. 25 W. R., 23.

107. Suit for possession and mesne profits—Value of the original suit—Bengal, N.-W. Provinces, and Assam Civil Courts Act (XII of 1867), s. 21.—In a suit for possession and mesne profits, the value of the original suit for the purposes of s. 21 of Act XII of 1867 depends not merely upon the property sought to be recovered, but also upon the value or amount of the profits recoverable. *MOHINI MOHAN DAS v. SATIS CHANDRA ROY*

108. Court Fees Act (VII of 1870), ss. 7 and 11—Mesne profits from the institution of suit, Claim as to—S. 169 of the Code of Civil Procedure (Act VIII of 1859)—S. 50, cl. (f), and s. 211 of the Code of Civil Procedure (Act XII of 1882).—The plaintiff in his plaint prayed for mesne profits only from the institution of his suit till the property in question was restored to him, and the decree awarded him those profits and directed that they should be determined in execution. After the property was restored to the plaintiff, he applied, in execution of the decree, to have the amount of mesne profits determined, which being done, a question arose as to whether the plaintiff could proceed to further execute his decree without paying the Court-fee on the amount so awarded in execution. *Held* that no Court-fee was required. S. 11 of the Court Fees Act (VII of 1870) applies to a claim for mesne profits for which an amount can be and has been claimed by the plaintiff, and in respect of which some fee has been actually paid. *RAMKRISHNA BHUKARI v. BHIMABAI*

109. Pre-emption, Suit for.—In a suit for pre-emption, the valuation of the property sued for is to be calculated at the market value of the sudder jumma. *ANJUD SINGH v. DEEPA SINGH*

110. Bengal Civil Courts Act (VI of 1871), s. 20.—In a pre-emption suit, the subject-matter is the right of pre-emption, the value of which, and not that of the

110. NAVNHOO SINGH v. JOHAN SINGH
[3 B. L. R., Ap., 143: 14 W. R., 238 note]
[14 W. R., 228]

VALUATION OF SUIT—continued.

1. SUITS—continued.

established, the plaintiff could not recover possession of the share. *Held* on the question whether the plaintiff had jurisdiction that the value of the subject-matter of the suit was the value of the mortgage, and as the value of each right did not exceed Rs 1000 even if it were held

Singh v Kallu, I L R, 3 All, 778, followed. *Manabher v Narayan Jax*, I L R, 3 All, 823.

116. *Valuation of suit—Court fees—Court fees—Act of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.*

of one-third of the mortgaged property against the mortgagees who had purchased the shares of P and T, the other mortgagees. *Held* by the full Court that with reference to T, art. (ix), of the Court fees Act (VII of 1870), that the defendant mortgagees bought up the equity of redemption of two of the mortgagees, and for same relinquished their mortgage-debt and so by their own act empowered the plaintiff to sue for redemption of one-third of the property, the principal money now secured as between them and the plaintiff may now be regarded as one-third of the original mortgage amount, namely, Rs 333 6-4, more particularly as local enactments allowed, as far as possible, be construed in favour of the subject. *Backhouse v Doble* also, with reference to the terms of s. 3 of the

terms of the plaint it was obvious that in the present case the subject-matter in dispute was Rs 333 6-4, the one-third of the original mortgage sum of Rs 1000, and that it was therefore beyond the limits of the Plaintiff's pecuniary jurisdiction. *Held* in *Manabher v Narayan Jax*, I L R, 3 All, 823. **117.** *Valuation of suit—Court fees—Court fees—Act of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.*

VALUATION OF SUIT—continued.

1 SUITS—continued.

property itself, determining the question of jurisdiction under s. 20, Act VI of 1871. *Naray Singh v Kashi Narayan Singh*, I L R, 13 Cal, 356. **118.** *Act (xv) of 1870, ss 5 and 6—(6)—Suit for redemption of separate plots of land not being a fractional share of a revenue-paying unit.—Held* that in a suit for redemption in respect of separate plots of land which did not constitute any definite fraction of a distinct revenue-paying area and were

is for a definite fractional share, on five times the Government revenue. *REFERENCE UNDER THE COURT FEES ACT, 1870, s. 3.* *[I L R, 16 All, 493]*

land a *pro forma* defendant. *Held* that the value of the subject-matter of the suit was not the market value of the land, but the amount of the mortgage money. *Kumar Singh v Arun Singh*, I L R, 5 All, 332. **119.** *Court fees—Mortgage—Mortgage—Act (xv) of 1870, s. 20—value, Com.* *Act (xv) of 1870, s. 20—value, Com.* *Act (xv) of 1870, s. 20—value, Com.* *Act (xv) of 1870, s. 20—value, Com.*

purpose of jurisdiction. *Manabher v Narayan Jax*, I L R, 3 All, 823. **120.** *Valuation of suit—Court fees—Court fees—Act of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.* *Act (xv) of 1871, s. 20—value, Com.*

VALUATION OF SUIT—continued.

1. SUITS—continued.

and reversed the decree of the Subordinate Judge. Held, on second appeal, that no appeal lay to the District Court from the decision of the Subordinate Judge. As the Subordinate Judge found that no sum remained due on the mortgage, and as the original advance was alleged to have been Rs. 50, the suit was governed by the provisions of Ch. II of the Dekkan Agriculturists' Relief Act (XVII of 1879). *AMRITA BIN BAVURI v. NARAYAN GOPALJI SHAMJI* [I. L. R., 13 Bom., 489]

Suit on mortgage—Value of subject-matter of suit.—In a suit upon a mortgage, where the sum due upon the mortgage is unknown, what determines the value of the subject-matter of the suit is the amount of the mortgage, the rights connected with which are the subject of contention. *KAM CHANDRA BABA SATHI v. JANARDHAN APPAJI* [I. L. R., 14 Bom., 19]

Court Fees Act (VII of 1870), s. 7—Suit for redemption of mortgage.—In a suit for the redemption of a kanom the institution fee must be computed on the kanom debt as it originally stood. *REVENUE UNDER COURT FEES ACT, s. 5* [I. L. R., 14 Mad., 480]

Court Fees Act (VII of 1870), ss. 7 (ix) and 17—Redemption suit against mortgagee in possession—Arrears of rent.—In a redemption suit against a mortgagee in possession, when the mortgagee has not paid rent which has been stipulated for, and the plaintiff asks for an account in taking which the arrears of rent should be deducted from the mortgage amount,—*Held* that the court-fee should be computed according to the principal sum expressed to be secured by the mortgage. *BAOABAB FATEH v. APPU FATEH* [I. L. R., 19 Mad., 16]

Suit to redeem mortgage and for rent—Madras Civil Courts Act (Mad. Act III of 1873), s. 14.—The karnavan of a Malabar tawwad, having the jami title to certain land and holding the uram right in a certain public devasom to which other land belonged, demised lands of both description on kanom to the defendants' tawwad, and subsequently executed to the plaintiff a melkanom of the first-mentioned land and purported to sell to him the jami title to the last-mentioned land. In a suit brought by the plaintiff to redeem the kanom and to recover arrears of rent,—*Held* that, for the purposes of determining the jurisdiction of the Court of appeal, the value of the subject-matter of the suit was the aggregate value of the two heads of relief. *KONNA PANNAR v. KANUNNA KARA* [I. L. R., 16 Mad., 328]

125. Rights, Suit for—Burma Courts Act, 1875, s. 49—Appeal.—The proviso in s. 49 of the Burma Courts Act amounts to an express declaration that it is a condition precedent to the right of appeal from the Recorder's Court that the suit shall be one which has an

VALUATION OF SUIT—continued.

1. SUITS—continued.

have lain had the suit been instituted in a Court having a more limited jurisdiction. *BAZENDRO LATI GOSSAM v. SHAMA CHURN LAHORI* [I. L. R., 5 Cal., 188]

Suit to redeem mortgaged land paying revenue to Government.—The stamp duty payable under Sch. B of Act X of 1862, on a suit to redeem mortgaged land paying revenue to Government, should be calculated on the sum for which the land is mortgaged, and not on the market value of such land. *NANDAKI SUNDARAI NAIK v. BATATI VITHAL* [5 Bom., A. C., 153]

Suit by kanom holder against jami and holders of prior kanom in possession.—A suit brought by a kanom-holder against the jami and the holders of a prior kanom in possession, to recover possession of the lands, may be properly treated, for the purpose of jurisdiction, as a suit for land, although it results in a decree for redemption, and, if regarded as a redemption suit, would be cognizable by a Court of subordinate jurisdiction. *MARAKAR v. PARAKESWARAN* [I. L. R., 6 Mad., 140]

Court Fees Act (VII of 1870)—Dekkan Agriculturists' Relief Act (XVII of 1879), Ch. II.—The valuation of a suit for redemption for purposes of jurisdiction is on it by the mortgagee. It is that amount, and the right connected with it, which is the usual subject of contention in a mortgage-suit. *PER BIRWOOD, J.*—The rules laid down in the Court Fees Act (VII of 1870) are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction. *RUPCHAND KARNI CHAND v. BATAVANT NARAYAN* [I. L. R., 11 Bom., 591]

120. Dekkan Agriculturists' Relief Act (XVII of 1879), Ch. II, s. 3—Appeal—Jurisdiction.—In a redemption-suit the valuation of the subject-matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied, and the mortgagee does not say what he claims in respect of the mortgage-debt, the amount found to be remaining due on the mortgage, if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit. *RUPCHAND KHEMCHAND v. BALWANT NARAYAN, I. L. R., 11 Bom., 591, followed.* The plaintiffs, who were agriculturists, sued to redeem certain lands, alleging that they had been mortgaged to the defendants' father for Rs. 50, and that the debt had been satisfied out of the rent and profits of the mortgaged property. The defendants denied the alleged mortgage. The Subordinate Judge found that the mortgage was proved, and the mortgage-debt had been more than paid off out of the profits of the property in dispute. He therefore passed a decree awarding possession to the plaintiffs. Against this decree the defendant appealed. The District Court found that the mortgage was not established

VATUATION OF SUIT—continued.

plaintiff, "undervaluation" is no ground for dismissing the defendant's appeal. *KAKRISHORE KOWAR v. KAKRISHORE KOWAR*. 5 B. L. R., Ap., 30

138. — *Insufficiently stamped appeal—Deputy Registrar, Power of—Civil Procedure Code, 1859, s. 31.*—The Deputy Registrar has no authority to make an order returning a petition of appeal when the stamp fee paid upon is insufficient. The right course for that officer, if his requirements as to stamps are not complied with, is to lay the matter before the Court. But if the appellant is ready to pay what is required, then, whether the time for filing the appeal has expired or not, the Deputy Registrar is bound to receive it if it was originally presented in time. *AYYAR AIR v. KARI CHAND DOSS*. 24 W. R., 258

139. — *Overvaluation—Refund of stamp duty.*—Where excess stamps had been filed in consequence of an overvaluation of the appeal, the surplus amount was ordered to be refunded. *IN THE MATTER OF GHANT*. 14 W. R., 47

140. — *Law applicable to valuation—Law in force at presentation of appeal.*—The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under a law obsolete at the period of appeal can have no influence in the decision. *AYO-XYMOS*. 5 Mad., Ap., 44

141. — *Civil Procedure Code, 1859, s. 229—Change of law between date of original suit and date of claim, Effect of, on jurisdiction.*—The subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal, and not of the suit which has led to it. For the purpose of jurisdiction, a claim under s. 229 of Act VIII of 1859 is a fresh suit, and not a continuation of the suit in which the claim is made, so that where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim. *MUTTUMAL v. CHINNANA GOUNDER*. I. L. R., 4 Mad., 220

142. — *Bengal Civil Courts Act (Beng. Act VI of 1871), s. 22—Subject-matter in dispute—Jurisdiction of the High Court.*—The appeal from the decree or order of a Subordinate Judge or Munsif, where the amount or value of the subject-matter in dispute in a suit exceeds Rs. 5,000, lies to the High Court, although the amount or value of the subject-matter in dispute in appeal is less than Rs. 5,000. *IN THE MATTER OF THE APPEAL OF DUTTA CHAND*. 9 B. L. R., 190

S. C. DOOTY CHUND v. NIRBAN SINGH. NUREN-DER NARAIN SINGH v. SAKH NARAIN DOSS. NUREN-SINGH v. KAMPERSHAD SINGH [15 W. R., 261

VATUATION OF SUIT—continued.

2. APPEALS—continued.

So also held, under s. 18, Act XVI of 1868, by the majority of the Court (PEARSON, J., dissenting) the North-Western Provinces in *MAHOMED HOSSEI KHAN v. SHIB DUTT*. [5 N. W., 108: Agre., F. B., Ed. 1874, 27

1 N. W., 117: Ed. 1873, 20

CHUNDER BHAN SINGH v. JAIRAM GUER [5 N. W., 17

But see *SKIMATI DASI v. SODHAKINI DOSSER* [9 B. L. R., 192 not

143. — *Appeal where one suit has been split up into several.*—Where suit for Rs. 13,777 was brought against defendant whose interests were not identical, and the Judge ordered separate trials of the different causes involved as provided in s. 9, Act VIII of 1859, an appeal by the defendants from the decision in one of the suits valued at Rs. 143 was held not to lie to the High Court. *RAJ COOMAR DOSS v. BIDHOO MOOKER DASSER*. 15 W. R., 3

144. — *Interest on amount of appeal.*—Where an appeal was brought from an order in execution of the decree in a suit in which both the amount sued for and the amount of the decree were below Rs. 5,000, but by reason of the interest the appeal was valued at more than that sum, the case was held to come within the principle of *In re Duli Chand*. *RAJ DHANPAT SINGH BABA DOOR v. MADHUMATI DEBI*. [9 B. L. R., 197 note: 18 W. R., 31

145. — *Subject-matter in dispute—Jurisdiction of High Court—Execution of decree.*—When the High Court called up an appeal to the Zilla Judge, and tried it as a regular appeal, and passed a decree thereon, *—Held* that this did not entitle the parties to prefer an appeal to the High Court in the proceedings in execution of that decree. Such appeal would lie to the Zilla Judge. *RAMA-NOOGHA SAKHAY v. BYJANATH LAL*. [10 B. L. R., 291 note: 15 W. R., 164

146. — *Execution of decree.*—When the High Court called up an appeal over Rs. 5,000. *RUTNAMJORE KOOR v. RAM DASS*. [10 B. L. R., 290: 19 W. R., 131

147. — *Suit in value over Rs. 5,000—Appeal heard by Judge without jurisdiction.*—The High Court in special appeal remanded a case to the Subordinate Judge against the case having been re-tried, an appeal against the second decree of the Subordinate Judge was filed in the

VALUATION OF SUIT—continued.

2. APPEALS—continued.

163. Appeal from decree in suit

Profits to be determined in execution of decree—*Valuation of appeal against decree*.—In a suit for land with mesne profits a decree was passed for the plaintiff in which the amount of mesne profits was left to be determined in execution, the date from which they should be computed being the date of the suit. The defendant appealed against the decree on the ground that he should not have been decreed to pay either mesne profits or costs. In the valuation of the appeal for the purposes of the Court Fees Act, nothing was included on account of the mesne profits. *Held* that no stamp duty was payable in respect of the mesne profits subsequent to the institution of the suit. *Maidan v. Jankakiravara*. I. L. R., 21 Mad., 371.

See KAMAKRISHNA BHAKAT v. BHIMABAI I. L. R., 15 Bom., 416.

164. Appeal under cl. 10 of Letters Patent, High Court, N. W. P., from an order of remand under s. 562 of the Code of Civil Procedure—*Court Fees Act (VII of 1870)*, sch. ii, art. 11.—*Held* that in an appeal under s. 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under s. 562 of the Code of Civil Procedure the proper Court-fee is Rs. 2. *Bairi Bai v. Mahabir Rai*. I. L. R., 21 All., 178.

165. Appeal under Agency Rules, No. 22, under Act XXIV of 1839—*Court Fees Act (VII of 1870)*.—An appeal preferred to His Excellency the Governor in Council under Rule No. 22 of the Agency Rules framed under Act XXIV of 1839 against the decision of the Government to the High Court for disposal is not chargeable under the Court Fees Act. *KERKAR v. UNDER COURT FEES ACT, s. 5*

166. Appeal in suit to enforce a right of pre-emption—*Appeal by purchaser—Court-fee—Act VII of 1870 (Court Fees Act)*, s. 7 (1) and (2).—Where, in a suit to enforce a right of pre-emption, a decree was passed against the vendee-defendants, and they appealed from the same on the grounds that they were entitled to receive from the plaintiff-pre-emptors a sum larger than that found by the Court of first instance to have been the purchase-money, and also that the plaintiffs had estopped themselves from asserting the right by refusing to purchase.—*Held* that the nature of the suit was not changed in appeal, and that, on the contrary, the subject-matter of the dispute between the parties was the right of pre-emption the value of which, for the purposes of Court-fee, was to be determined in manner directed by s. 7, cl. (2), of the Court Fees Act, VII of 1870.

Ram Lakhan Rai v. Bandan Rai distinguished. Where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre-empt has or has not been established, as the case may be, no matter of his claim. *KARU, RAU, ALUOT v. 24 W. R., 454*

VALUATION OF SUIT—continued.

2. APPEALS—continued.

159. Appeal from order of Judge under Land Acquisition Act (I of 1884) on reference by Collector as to disposal of compensation awarded—*Court Fees Act (VII of 1870)*.—In an appeal to the High Court from the order of the District Judge made upon reference by the Collector under ss. 18 and 19 of the Land Acquisition Act, 1891, as to the disposal of compensation awarded for land taken up by Government under the Act, the memorandum of appeal must be stamped as an appeal from an original decree. *Suto Kartar Rai v. Mohan I. L. R., 21 All., 354*

160. Appeal from order disposing of dispute under Civil Procedure Code, s. 322B—*Dispute as to extent of judgment-debtor's liability to claim—Nature of appeal—Court Fees Act, VII of 1870*, sch. II, No. 11.—An appeal from the decision of a dispute under s. 322B of the Civil Procedure Code falls directly within the exception of art. 11, sch. II of the Court Fees Act (VII of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit upon an *ad valorem* stamp. *Srinivasan Ayyangar v. P. V. Nambi Nayakar, I. L. R., 4 Mad., 420*, distinguished from. *Akhbar Khan v. Mado Das* I. L. R., 7 All., 565

161. Appeal in partition suit—*Court Fees Act, sch. II, art. 17, cl. 6—Stamp on memorandum of appeal in partition suit*.—The stamp fee payable on appeals to the High Court in suits asking for "partition, the separation of a share, and for his possession of that share after separation," is that leviable under art. VI, cl. 17, sec. II of the Court Fees Act. For the purpose of jurisdiction the Court should be guided by the value of the property in suit, but the amount of the stamp fee should be governed by a different principle. *Kirtu Churn Mitter v. Avnath Nath Das* I. L. R., 8 Cal., 757; 11 C. L. R., 95

See BADYAKATH ADYA v. MAKHAN LAL ADYA I. L. R., 17 Cal., 680

162. Appeal from decree for possession disallowing perpetual character of leases.—A suit for possession of certain lands having been decreed on the ground of plaintiff's right of occupancy, but the perpetual (mistake) character of the leases under which the claim had been made having been disallowed, an appeal was preferred to *Held* that as the value of the claim would be the difference in the value of the land as held under a lease tenure at a fixed rent, or an ordinary tenure at a fluctuating rent, and as this might be an extremely difficult calculation, the stamp fee upon the appeal would be properly fixed according to the valuation put by the appellant upon the subject-matter of his claim. *KARU, RAU, ALUOT v. 24 W. R., 454*

VALUATION OF SITES—continued.

—continued.

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[I. T. R., 15 Mad., 69
NARAYANAN v. NARAYANAN, I. T. R., 17 Mad., 183, followed.

the plaintiff. *Held* that the valuation of the appeal for the purpose of jurisdiction was to be taken as being less than \$5,000, notwithstanding that the subject-matter of the original suit was valued above that sum, and that the appeal lay to the District Judge, and not to the High Court. KARIMA v. KANAK KUTTI. MANOHAR v. KANAK KUTTI.

179. Suits - Talva.

—*Suit for account*—In a suit for an account the valuation entered in the plaint for the purpose of fixing Court-fees determines the question of jurisdiction, the valuation for both purposes being the same under s. 8 of Act VII of 1887. The plaintiff sued for an account, and valued the relief sought at Rs. 100. The suit was filed in the Court of a Subordinate Judge of the first class. The Subordinate Judge rejected the claim. Thereupon the plaintiff appealed to the High Court, winning his claim in appeal at Rs. 10,500. Held that the appeal lay to the District Court, and not to the High Court. *MAHARAJA MANSINGH v. MEHTA BAJRAO* [I. T. R., 18 Bom., 40]

[I. T. R., 18 Bom., 40

180. *Suits for account—Amount of claim as fixed by court—stamp—Amount of claim as fixed by plaintiff—Relief incidental to the principal relief—According to s. 8 of the Suits Valuation Act (VII of 1887), in suits for taking an account the Court-stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff. In suits for taking an account the plaintiff having obtained several items which were all incidental to the chief item of relief, the plaintiff was held to be substantially one to have a minor plaintiff's estate taken and that it is to have accounts taken and*

The plaintiffs having put the valuation of the suit at Rs10 in the plaint,—*held* that the High Court had no jurisdiction to hear the appeal against an order rejecting the plaint. The appeal was to the District Court. The appeal was thereby returned for presentation in the proper Court.

*Courts Act (Amended, Act II of 1935), s. 13—Award of relief—Suit for partition.—In an appeal brought by the members of one Nambudri Ilom against the members of another for partition and delivery of a moiety of the property of an extinct widow, it appeared that the value of the share claimed was less than Rs.5,000. Held that the appeal lay to the District Court. *Krishnasami v.**

181. *Valda*—*Suits*

Non Act (VII of 1857) s. 8—*Suit for account*—*Court Fees Act (VII of 1870), s. 7 (iv), d (f)*

and s. 11—*Bombay Civil Courts Act (XIV of 1869), s. 26*—*In a suit for an account of partner-*

ship dealings, the plaintiffs valued the claim approx-

imately at Rs 1000. The Subordinate Judge passed

a decree awarding to the plaintiffs a sum of

Rs 6300-2. The plaintiffs thereupon paid an

additional Court-fee of Rs 1000 under s. 11 of the

Court Fees Act (VII of 1870). The defendants

appealed to the High Court from the decree of the

Subordinate Judge. The plaintiffs objected that the

appeal lay to the District Judge, and not to the

High Court. Held that the value of the subject-

matter of the suit exceeded Rs 5000; the appeal

therefore lay to the High Court under s. 10 of

Act XIV of 1800. Inasmuch as the appeal

was made under s. 10 of the said Act, the Court

was not bound by the valuation made by the

plaintiffs, and could not be bound by the value-

*amount—*Mt. I* that the suit be bound by the value-*

*amount—*Mt. I* that the suit be bound by the value-*

*amount—*Mt. I* that the suit be bound by the value-*

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*amount—*Mt. I* that the suit be bound by the value-*

186. *Court Fees Act*

(VII of 1870), s. 10, cl. 2, s. 12 cl. 11 and 17,

cl. 6—*Order in appeal by defendant for payment*

of fees by plaintiff—*The plaintiffs, having raised a*

claim to a house attached in execution of a decree

in part, sued for a declaration of title to four-

agrees their undivided brother, which was a joint in-

terest of the known amount, arising to the plain-

tiffs of Rs 1100. The plaintiffs obtained a decree, award-

ing the defendant appealed to the District Court,

where the appeal was pending, the District Judge,

holding that the Court fee paid on the plaint was

insufficient, ordered that the plaintiffs should pay the

deficiency. The plaintiffs appealed to the District Judge,

where the appeal was pending, the District Judge,

holding that the Court fee paid on the plaint was

insufficient, ordered that the plaintiffs should pay the

deficiency. The plaintiffs appealed to the District Judge,

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where the appeal was pending, the District Judge,

holding that the Court fee paid on the plaint was

insufficient, ordered that the plaintiffs should pay the

deficiency. The plaintiffs appealed to the District Judge,

where the appeal was pending, the District Judge,

holding that the Court fee paid on the plaint was

VALUATION OF SUIT—continued.

keep a correct account of the timber removed, the first class Subordinate Judge rejected the claim for want of jurisdiction,—*Held* that the suit was one for a declaration and consequential relief under s. 7, cl. 4, of the Court Fees Act, and that, as the claim was valued at Rs20 only, the appeal lay under Act VII of 1887, s. 8, to the District Court. An injunction is in the nature of consequential relief. GURAB SINGH I. L. R., 18 Bom., 100 2. LAKSHMANISINGJI

2. APPEALS—continued.

188. — Suit for injury.

tion and specific performance—Suits Valuation Act (VII of 1887, s. 8—Court Fees Act (VII of 1870)—Valuation for purposes of jurisdiction.—

The provisions of s. 8 of Act VII of 1887 apply to Appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the

purposes of jurisdiction must be determined by the provisions of that section. In a suit of the description mentioned in s. 8 of Act VII of 1887, the

plaintiff valued his claim at \$664 for the computation of Court-fee, and at \$14,000 for purposes of jurisdiction. Held that the appeal from the decree

of the Court of first instance lay to the District Court, and not to the High Court. BAI VARUNDA LAKSHMI, Bai Narayana, 11 B 18 Bora 207

189. — Bengal, N.-W. — *P. and Assam Civil Courts Act (XII of 1887).*

s. 21, sub-s. (1)—"Value of the original suit;"—Where the value of a suit was found by the lower Court to be less than Rs. 500, and the plaintiff con-

High Court on the valuation of ₹7,500 made in his

...the value of the original Court and Assam Civil Courts Act (XII of 1887) did not

that as it did not appear in the present case that the appeal was rightly preferred to the High Court; and

the value of the property should be taken to be the value of the property at the time of the death of the owner, and the value of the property at the time of the death of the owner.

needed not be considered. *Lakshman Bhaktar V. Babaji Bhaktar, I. T. R., 8 Bom., 31, and Mahabir Singh v. Behari Lal, I. T. R., 18 All., 320, approved.*

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NITIMONY SINGH v. JAGABANDHU ROY
[I. T. R., 28 Cal., 536
Court Fees Act]

(VII of 1870), s. 16, and sch. II, art. 71, cl. iii.—
Declaratory decree, Suit for—Consequential relief
—Right of interest to chattels (offerings to idols)—

Suit for arrears of maintenance.—In a suit upon an ekar executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that

the money due was realized from the sum of the charges (offerings to the idol) and recovered from the

passed a decree for the arrears, but refused to make the declaration. The plaintiffs appealed only against the order not to pay the arrears, and the court decided against them. The plaintiffs appealed only against the declaration. The plaintiffs appealed only against the order not to pay the arrears, and the court decided against them.

The respondent objected that the declaration asked for in the order retaining the declaration, the amount of appeal bearing a Court-fee stamp of Rs. 10. The respondent objected that the declaration asked for in

VALUATION OF SUIT—continued.

memorandum was correctly stamped under s. 16 and cl. iii, art. 17, sch. II of the Court Fees Act (VII of 1870). *Venkappa v. Narasimha, I. T. R., 10 Mad., 187, and Vilhal Krishna v. Balakrishna Jangarad, I. T. R., 10 Bom., 610, distinguished.* *Shivanand Datta Jha v. Sattanand Datta Jha, I. T. R., 23 Cal., 645*

appeal—Suit for declaratory decree—Possibility of valuing subject-matter—Original valuation by plaintiff—*Constr. Bldg. Ass'n (DIT) v. City of Chicago* (1974).

(c).—A plaintiff was granted a decree (which was affirmed on appeal to the Subordinate Court), declaring

without consideration. The suit is based on the fact that the defendant, a corporation, is a party to the transaction. The suit is based on the fact that the defendant, a corporation, is a party to the transaction.

taxpayer's Court that figure was altered to \$2,000, the amount mentioned in the deed. One of the defen-

ants preferred a second appeal to the High Court, there a question arose as to the amount of duty payable on such appeal. *Held* that s. 7 (iv) (c) of

the Court fees Act applied, and that the valuation given by the plaintiff was the valuation to be accepted. Whether the reference to an appeal

the sub-section applies to a case in which the subject-matter of the appeal is not co-extensive with the subject-matter of the suit—*Quare. Karani*

Chan v. Daryal Singh, I. L. R., 5 All., 331, considered. SAMAYA MAVALI v. MINAMMAL
[I. L. R., 23 Mad., 490]

192. Memorandum of
appeal to Special Judge under Bengal Tenancy
Act (VII of 1870), ss. 12 and 13

—*ib.*, art. 1, cl. (b), part II, art. 17, cl. (vi) —
Engal Tenancy Act, s. 104, cl. (2), s. 108, cl. (2) —

English Tenancy Act—A number of tenants were

rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under 108, cl. 2, from the Revenue Officer's decision.

the appeal was dismissed by the Special Judge, on the grounds that as many of the respondents, making all or nearly all the tenants respondents, were absent and the respondents were not represented by counsel, the Special Judge was of the opinion that the respondents were not properly represented and that the respondents were not properly represented by counsel.

the appellants petitioned the High Court to set aside

held by a Full Bench that the Local Government

which the landlord was authorized to join as defendant. VI of the Government rules under the Act of 1901, and the Bengal Tenancy Act in making the 29 of

Held also that the decision of the court in *Ward* was not binding on the court in *Ward* as it was not a question relating to the merits of the case.

valuation, interests of any question remaining, and s. 12 of the Court Fees Act; and that the pro-

edges in this case could not properly be regarded as a suit, and neither art. 17, cl. vi, of sch. II nor

VALUATION OF SUITS—continued.

3. APPEALS—continued.

105. Decree for redemption conditional on payment of a certain sum.

—Appeal by mortgagee—Court fee payable on memorandum of appeal—Act VII of 1870 (Court Fee Act), s. 7, cl. 4—Where a mortgagee sues for redemption on the allegation that the mortgagor has been satisfied and a decree for redemption is passed on payment of a certain amount, and the mortgagor appeals against the amount he is ordered to pay, the Court fee payable on the memorandum of appeal must, under s. 7, cl. 4 of Act VII of 1870, be computed according to the principal money repaid according to the mortgage deed, and not to the amount alleged by the appellant to be due. *Prasad v. Kalyan Singh & Sita Bai*, 1 L. R., 13 All., 94.

106. Statement in will as to—

VALUE OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

107. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

108. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

109. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

110. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

111. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

112. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

113. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

114. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

115. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

116. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

117. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

118. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

119. Statement in will as to—

VALUATION OF PROPERTY

See EVIDENCE—CIVIL CASES—WILLS.

120. Statement in will as to—

VALUATION OF PROPERTY

VALUATION OF SUITS—continued.

2. APPEALS—continued.

1. If of the Court fees Act was applicable.

memorandum of appeal was nothing more or less than an application submitted to the Court for the purpose of obtaining a decree in the matter.

only under art. 1, cl. (b), part II of sec. 11 of the Court Fees Act.

The case of *Prin Ghoras v. Man*.

Khelion Tall Bhukit, 1 L. R., 18 Cal., 667, was wrongly decided.

121. *Prin Ghoras v. Man*.

122. *Prin Ghoras v. Man*.

123. *Prin Ghoras v. Man*.

124. *Prin Ghoras v. Man*.

125. *Prin Ghoras v. Man*.

126. *Prin Ghoras v. Man*.

127. *Prin Ghoras v. Man*.

128. *Prin Ghoras v. Man*.

129. *Prin Ghoras v. Man*.

130. *Prin Ghoras v. Man*.

131. *Prin Ghoras v. Man*.

132. *Prin Ghoras v. Man*.

133. *Prin Ghoras v. Man*.

134. *Prin Ghoras v. Man*.

135. *Prin Ghoras v. Man*.

136. *Prin Ghoras v. Man*.

137. *Prin Ghoras v. Man*.

138. *Prin Ghoras v. Man*.

139. *Prin Ghoras v. Man*.

140. *Prin Ghoras v. Man*.

141. *Prin Ghoras v. Man*.

142. *Prin Ghoras v. Man*.

143. *Prin Ghoras v. Man*.

144. *Prin Ghoras v. Man*.

145. *Prin Ghoras v. Man*.

146. *Prin Ghoras v. Man*.

147. *Prin Ghoras v. Man*.

148. *Prin Ghoras v. Man*.

149. *Prin Ghoras v. Man*.

150. *Prin Ghoras v. Man*.

151. *Prin Ghoras v. Man*.

152. *Prin Ghoras v. Man*.

153. *Prin Ghoras v. Man*.

154. *Prin Ghoras v. Man*.

155. *Prin Ghoras v. Man*.

156. *Prin Ghoras v. Man*.

157. *Prin Ghoras v. Man*.

158. *Prin Ghoras v. Man*.

159. *Prin Ghoras v. Man*.

160. *Prin Ghoras v. Man*.

VALUATION OF SUIT—continued.
2. APPEALS—continued.

valorem fee was payable by the appellant. *Held* the memorandum was correctly stamped under s. 16 and cl. iii, art. 17, sch. II of the Court Fees Act (VII of 1870). *Tenkappa v. Narasimha*, I. L. R., 10 Mad., 187, and *Vilhal Krishna v. Balakrishna Jandam*, I. L. R., 10 Bom., 610, distinguished. *Ghritamund Datta Jha v. Satyanand Datta Jha*, I. L. R., 23 Cal., 645

191. *Fee payable on appeal—Suit for declaratory decree—Possibility of valuing subject-matter—Original valuation by plaintiff—Court Fees Act (VII of 1870), s. 7 (iv) (c).—*A plaintiff was granted a decree (which was affirmed on appeal to the Subordinate Court), declaring a sale-deed invalid on the ground that it had been obtained by fraud, coercion, undue influence, and without consideration. The suit had been originally valued by plaintiff at Rs800, but by an order of the Munsif's Court that figure was altered to Rs2,000, the amount mentioned in the deed. One of the defendants preferred a second appeal to the High Court, where a question arose as to the amount of duty payable on such appeal. *Held* that s. 7 (iv) (c) of the Court Fees Act applied, and that the valuation given by the plaintiff was the valuation to be accepted. Whether the reference to an appeal in the sub-section applies to a case in which the subject-matter of the appeal is not co-extensive with the subject-matter of the suit—*Quare*. *Karum Khan v. Darya Singh*, I. L. R., 5 All., 331, considered. *SAMITA MAJHI v. MINAMAT*

192. *Memorandum of appeal to Special Judge under Bengal Tenancy Act—Court Fees Act (VII of 1870), ss. 12 and 17, sch. II, part I, cl. (b), art. 17, cl. (vi)—Bengal Tenancy Act, s. 104, cl. (2), s. 108, cl. (2), and s. 189—Order of parties in one application—Rule 25 of Rules of Government of India under Bengal Tenancy Act—A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue Officer's decision, making all or nearly all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of Rs10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code. *Held* by a Full Bench that the Local Government acted within the powers conferred by s. 189, cl. 1, of the Bengal Tenancy Act in making rule 25 of Ch. VI of the Government rules under the Act by which the landlord was authorized to join as defendants several defendants in one application for settlement of rents. *Held* also that the decision of the Special Judge did not dispose of any question relating to valuation, far less of any question relating to the payment of a fee, and the decision was not final under s. 12 of the Court Fees Act; and that the proceedings in this case could not properly be regarded as a suit, and neither art. 17, cl. vi, of sch. II nor*

VALUATION OF SUIT—continued.
2. APPEALS—continued.
keep a correct account of the timber removed, the first class Subordinate Judge rejected the claim for want of jurisdiction.—*Held* that the suit was one for a declaration and consequential relief under s. 7, cl. 4 (c), of the Court Fees Act, and that as the claim was valued at Rs230 only, the appeal lay under Act VII of 1887, s. 8, to the District Court. An injunction is in the nature of consequential relief. *Gyan Singh v. Lakshmansingh*, I. L. R., 18 Bom., 100

188. *Suit for injunction and specific performance—Suits Valuation Act (VII of 1887), s. 8—Court Fees Act (VII of 1870)—Valuation for purposes of jurisdiction.—*The provisions of s. 8 of Act VII of 1887 apply to Appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section. In a suit of the description mentioned in s. 8 of Act VII of 1887, the plaintiff valued his claim at Rs664 for the computation of Court-fees, and at Rs14,000 for purposes of jurisdiction. *Held* that the appeal from the decree of the Court of first instance lay to the District Court, and not to the High Court. *Bai Varnada Lakshmi v. Bai Mangavri*, I. L. R., 18 Bom., 207

189. *Bengal, N. W. P., and Assam Civil Courts Act (XII of 1887), s. 21, sub-s. (1)—Value of the original suit.—*Where the value of a suit was found by the lower Court to be less than Rs5,000, and the plaintiff contested that finding and preferred his appeal to the High Court on the valuation of Rs7,500 made in his plaint,—*Held* that the words "value of the original suit" in sub-s. (1), s. 21 of the Bengal, N. W. P., and Assam Civil Courts Act (XII of 1887) did not mean the value as found by the original Court, and the appeal was rightly preferred to the High Court; that as it did not appear in the present case that the overvaluation was the result of any design to change the venue of appeal, the question whether "value" in the said section should be taken to be *bond fide* value need not be considered. *Lakshman Bhikar v. Babaji Bhikar*, I. L. R., 8 Bom., 31, and *Alakbar Singh v. Behari Lal*, I. L. R., 13 All., 320, approved. *NIMMONY SINGH v. JAGABANDHU ROY*

190. *Court Fees Act (VII of 1870), s. 16, and sch. II, art. 17, cl. vi.—Right of priest to charan (offerings to idol)—Declaration decree, Suit for—Consequential relief—Suit for arrears of maintenance.—*In a suit upon an *ekhar* executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the charan (offerings to the idol) and recoverable from the defendants' successors in office, the original Court passed a decree for the arrears, but refused to make the declaration. The plaintiffs appealed only against the order refusing the declaration, the memorandum of appeal bearing a Court-fee stamp of Rs10. The respondent objected that the declaration asked for in appeal involved consequential relief, and that an

EVALUATION OF SUITS—continued.

2. APPEALS—continued.

105. — *Decree for redemption conditional on payment of a certain amount.* — *Appeal by mortgagee—Court fee payable on memorandum of appeal—Act 111 of 1870 (Court Fees Act), s. 7, cl. 4—Where a mortgagee was for redemption on the allegation that the mortgagee had been made, and a decree for redemption was passed on payment of a certain amount, and the mortgagee appealed against the amount he is entitled to pay, the Court fee payable on the memorandum of appeal must, under s. 7, cl. 5, of Act 111 of 1870, be computed according to the principal money expended to be secured by the instrument of mortgage, and not according to the balance which the mortgagee alleged to be due. *Demile*.—If the decree had allowed redemption on payment of a certain sum and the defendant mortgagee was appealing in the formal debt, that the amount due was greater than that sum, the Court should be satisfied as to the difference between the sum mentioned in the decree and the amount alleged by the appellant to be due. *Pinnard v. Kanai Sikon*, 128 Ind. L. R., 13 All. 64.*

VALIDITY OF PROPERTY

Statement in will as to—

See Evidence—Civil Cases—Recitals in Documents 1 L. R., 1 Bom., 501

VARIANCE BETWEEN PLEADING AND PROOF.

- 1. *General Cases* 9323
- 2. *Special Cases* 9325
- 3. *Abandonment of Part of Claim* 9330

See Appeal—Grounds of Appeal

1 L. R., 16 Med., 603
See Appellate Court—Exercises of Powers in Various Cases—Privity.

1 L. R., 10 Bom., 303
See Cases where Error—Privity in Decrees and Other Documents

1 L. R., 21 Bom., 110
See Hindu Law—Custom—Inheritance and Succession.

1 L. R., 18 Bom., 611
See Hindu Law—Partition—Right to Partition—Purchaser from Coparcener 1 L. R., 20 Med., 243

See Cases where Issues—Privity on Appeal 1 L. R., 17 Bom., 631

See Evidence—Recitals in Documents—Office to give 1 L. R., 17 Bom., 631

EVALUATION OF SUITS—continued.

2. APPEALS—continued.

s. 17 of the Court Fees Act was applicable. The memorandum of appeal was nothing more or less than an application subject to one Court fee of eight annas only under art. 1, cl. (6), part 11 of sch. XI of the Court Fees Act. The case of *Peta Ganes v. Ram Kalliam* 101 Ind. L. R., 18 Cal., 667, was wrongly decided. *Pradya Thakur v. Pradya Sikon* 1 L. R., 23 Cal., 723

108 — *Act 111 of 1870, s. 7, cl. 5—Relief in respect of costs—*

Ground that by the decree under appeal the costs of the
of the first schedule of the Court Fees Act 111 of 1870, s. 7, cl. 5, was
Mark v. Kanai 1 L. R., 10 Med., 350

109. — *Memorandum of appeal—Inefficiency stamped—Conditional order admitting appeal—Agency made good after period of limitation—Appeal from decree granting two distinct declarations—A plaint contained a prayer for a declaration (1) that certain property was the joint property of the plaintiff, and (2) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another; and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title in the suit, passed on the 13th September 1887, granted both the declarations prayed for. The defendant appealed to the High Court against the whole decree and stamped their memorandum of*

appeal inefficiently stamped—Conditional order admitting appeal—Agency made good after period of limitation—Appeal from decree granting two distinct declarations—A plaint contained a prayer for a declaration (1) that certain property was the joint property of the plaintiff, and (2) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another; and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title in the suit, passed on the 13th September 1887, granted both the declarations prayed for. The defendant appealed to the High Court against the whole decree and stamped their memorandum of

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VARIANCE BETWEEN PLEADING AND PROOF—continued.

I. GENERAL CASES—continued.

8. Variance in pleading—Dismissal of suit, Ground for.—Held by a majority that the Code of Civil Procedure does not require the dismissal of a suit by reason of any variance in the pleading. *MAHOMED REZAODDIN v. HOSSEIN BUKAN KHAN*. 1 W. R., 300.

7. Raising issues after variance is shown.—A plaintiff will not be allowed to set up one case, and, having proved another, to ask for relief on such issues, and to give the relief thereon to which the plaintiff is entitled. *CHANDRANATH ALUTICK v. WOOMES CHANDRA PAUL*. 2 Hyde, 263.

8. Proof of cause of action not alleged.—Dismissal of suit, Ground for.—Claim on one cause of action, evidence showing another.—Where a plaintiff sues on one cause of action and in support thereof gives evidence which, if it establishes anything, establishes a different cause of action, the Court acts properly in dismissing his suit. *ALPHONSO-SOOPUR GOSSAVER v. HILLS*. 10 W. R., 242.

9. Amount proved exceeding amount claimed.—Degree.—Where the amount to which the plaintiff would be entitled on the evidence exceeds that specified in the plaint, plaintiff is restricted to the amount so specified. *NATHOORAM v. JARDINE, SKINNER & Co.*. Cor., 118.

10. Presumption from failure to prove allegations.—Onus of proof.—An adversary is entitled to the benefit of such presumptions as naturally arise from a party's failure to prove his allegations, even though the onus was in the first instance on the former. *GUJRA BISWAS v. SURE GOPAL PAUL CHOWDHURY*. 8 W. R., 395.

11. Failure to prove precise case pleaded.—Degree, Right to.—A previous ruling in *Beejyunnath Chatterjee v. Lukhee Monnee Dabee*, 12 W. R., 248, explained not to mean that a plaintiff must either get the thing he claims or nothing at all, but that having come into Court upon one title, which he asks to have declared and fails to prove, a plaintiff cannot claim the declaration of another. *GOTICK CHANDER SINGH v. ISHAN CHANDER DEB*. 23 W. R., 437.

12. Suit for possession alleging fraud.—Change to suit for redemption.—Where in a suit for possession the plaintiff went to trial on the question of fraud, and that question was tried out, he is not entitled upon appeal to abandon that issue and to ask the Court to treat his suit as one for redemption. *KAM DAO MONDAR v. INDRAMONI DAS*. [S C. W. N., 325].

13. Right to make party liable in different character.—Suit against party personally.—Representative liability.—In a suit to recover advances made to the defendant to carry on an

VARIANCE BETWEEN PLEADING AND PROOF—continued.

See CASES UNDER PLAINT—AMENDMENT OR PLAINT.

See RULES. 1. I. R., 15 Mad., 489.

See TITLE—EVIDENCE AND PROOF OR TITLE—LONG POSSESSION. 1. I. R., 19 Bom., 323.

1. I. R., 2 Cal., 418.

See WITHIN STATEMENT. 1. I. R., 1 Bom., 209.

I. GENERAL CASES.

1. Decision on point not raised in pleadings or issues.—A plaintiff must recover *secundum allegata et probata*, and no decree should be given in his favour on a point not raised in the pleadings not embodied in an issue. *JOYTARA DASSER v. MAHOMED MOHAMMED*. [1. I. R., 8 Cal., 975; 11 C. L. R., 399].

JAKIR v. JAHANGIR. 2 N. W., 407.

MOOKTARSHAN DEBEA v. COLLECTOR OF BARRACK. 12 W. R., 204.

TARA CHAND ROY v. NODIN CHANDER ROY. [21 W. R., 132].

PROFAR CHANDAN BOROAN v. COLLECTOR OF GOWALPORA. 23 W. R., 216.

2. Basis of decision of case.—Pleadings.—The determination in a cause must be founded upon a case, either to be found in the pleadings, or involved in, or consistent with, the case there- by made. *ESSEN CHANDER v. SHAMA CHURN BHULLO*. [1. I. R., 7, referred to. ALPHONSO L. A. V. MOORE v. YAO KAY SAWAY VYAPORNY MOODIAN v. YAO KAY].

1. I. R., 14 Cal., 801.

1. I. R., 14 I. A., 168.

3. Exception to rule "*Secundum probata et allegata*".—Admission of defendant.—The rule that the decree should be in accordance with what is alleged and proved is intended to prevent surprise, and is not applicable to a case in which the defendant's own admission is adopted as the ground of decision against him. *APARNA v. KAMRUPDI*. 1. I. R., 11 Mad., 367.

4. Amendment of case.—Mistake or misapprehension.—A plaintiff can be allowed to amend his case only when he has an honest case, but either through mistake or some misapprehension he has not placed the real facts before the Court. *BYRBO DUTT v. LEKHANAN KOOER*. [16 W. R., 123].

5. Civil Procedure Code, 1859, Operation of, as compared with old procedure in equity.—Under the Civil Procedure Code, parties are not bound so strictly to the pleadings as in any equity suit under the old procedure, if their being so bound would work in justice. *DOSSEER v. TARRACHUN COORDO CHOWDHURY*. [Bourke, A. O. C., 48].

VARIANCE BETWEEN PLEADING

VARIANCE BETWEEN PLEADING

AND PROOF—continued.

AND PROOF—continued.

2. SPECIAL CASES—continued.

1. GENERAL CASES—continued.

in which it was

appropriated to an owner of land, on a writ of habeas corpus.

to make the defendant personally liable.

The ownership of the land of the river was not the subject of contest before—Variation of claim disallowed—Although there is not in Michigan, as there is in England, an express law embodying the principle that gradual alluvion accrues to the land to which the accretion is made following the ownership of that land, the rule is equally well established in Michigan.

not be allowed to proceed against the defendant as representative of his father.

both to no purpose. The parties were separated by the accretion of adjoining waters on both banks of the river of waters. The plaintiff claimed the right to newly formed land, in said stream, which she alleged to have been formed by accretion upon an already existing bank or alluvial island which belonged to her. On that point there were concurrent findings against her. The accretion had taken place upon a bank owned, not by her but by the Government, and neither as a stream than here. *Hill* is the plaintiff must abide by the ground of claim which she had presented below, that being that the land was formed by gradual accretion to definite and visible boundaries.

by the defendant, but income

formed by gradual accretion to definite and visible boundaries.

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13 W. R., 113

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VARIANCE BETWEEN PLEADING AND PROOF—continued.

2. SPECIAL CASES—continued.

appeal that the document was invalid as being unregistered, declaring that it did not affect his interests. MADHUB AIR KHAY v. HOSAIN REZA KHAY [4 C. L. R., 52]

23. Contract—Assumption of facts. Decision on.—The determinations in a cause should be founded upon a case either to be found in the pleadings or involved in, or consistent with, the case thereby made. Therefore, where the relief sought by the plaintiff is grounded on a contract, the case must not be determined upon an alleged equity resulting from a different state of facts and inconsistent with that alleged by the plaintiff. *ESAY CHUNDER SINGH v. SHAMCHAND BHUTTO* [3 Ind. Jur., W. S., 87; 6 W. R., P. C., 57; 11 Moore's I. A., 7]

Followed in *Doss Ray Doss v. Monendro Roy Decha* 18 W. R., 274

24. Issues—Amendment of plaint—Variance between case in plaint and evidence.—The plaintiffs sued the defendants for damages for breach of contract, alleging in their plaint that they had agreed to sell, and the defendants to purchase, certain indigo seed, but that the plaintiffs had refused to take delivery, although the plaintiffs were ready and willing to deliver the same. Upon the evidence of the plaintiffs, it appeared that there was no contract as alleged in the plaint, but the contract, as stated by them, was that they (the plaintiffs) were to purchase seeds as agents for the defendants. The judge dismissed the suit on the ground that the plaintiffs were bound to prove their case as stated in the plaint. *Held* that the suit ought not to have been dismissed on that ground. The issues raised admitted of the true question being tried, viz., whether, under the circumstances, the defendants were liable to pay the price of the seed; and if they did not, the Court ought to have amended the issues, or framed additional ones. The object of the plaint is merely to bring the matter in dispute before the Court, but it is for the Court, upon the statements before it, to determine the real issue between the parties. *ABUTKHOT v. BETTS* [6 B. L. R., 273; 14 W. R., 181]

25. Ejectment, Suit for—Failure to prove lease—Reliance on general title, Right of eject his tenant on the expiration of the latter's term, or for breach of the conditions of his lease, and fails to prove the lease, he is not ordinarily at liberty in the same suit, ignoring the lease, to fall back upon his general title as though he had not set up and failed to prove the alleged lease. A plaintiff must be limited to the case which he puts forward in his plaint, but he may put forward an alternative case in his plaint from the commencement, as the defendant then will know that he has more than one case to meet, and will not be taken by surprise. *LAKSHMI-BAI v. HARI BIKH RAJI* 9 Bom., 1

VARIANCE BETWEEN PLEADING AND PROOF—continued.

2. SPECIAL CASES—continued.

defendant was allowed to raise the same objection to the suit as he might have taken had it been brought by the heir. On appeal it was contended on behalf of the defendant that the plaintiff, having sued as heir, could not be allowed to succeed on the basis of the solicitors, as this would be contrary to the rule laid down in *Kishan Chander Singh v. Shama Churn Laitoo*, 11 Moore's I. A., 7. *Held* that, if this objection had been taken in the first Court, the plaint and issues might and ought to have been amended, but as it was not so taken, and the substance of the case in the plaint was that the sale by the widow was invalid beyond her own interest, under the circumstances of the case there was no weight in the contention of the appellant. *NARAY KLOSSER v. SHERAMAT HAT* [I. L. R., 20 Cal., 1; L. R., 19 I. A., 221]

20. Raising fresh case on appeal.—In a suit to set aside a sale of ancestral property by a minor's father and guardian as made without necessity and for the father's prodigal expenditure, and without inquiry by the purchasers as to whether it was for the infant's benefit, the defendants alleged that the sale was made under pressure of a foreclosure suit on account of a demand under a former mortgage for an ancestral debt. Plaintiff, having failed to establish his case, sought to go back and open the consideration for the mortgage made so long as twenty years ago, but the Privy Council, agreeing with the High Court, refused to allow him to do so. *HUMERDA alias KHANOO v. LATOOT MENDRE BREGA* [17 W. R., P. C., 106]

21. Company—Contributors, List of—Amendment of plaint.—Where the holder of shares in a company was described in the list of contributors, against whom a balance order by the Court of Chancery had been made, as "Devji Bhaji, cotton merchant," and as being sued "in his own right,"—*Held* that the plaintiff's company could not be allowed to give evidence that the shares were in fact held by a firm consisting of two individuals named respectively Bhaji Zutani and Devji Hemraj; nor could the plaintiffs be allowed, at the hearing of the appeal, to amend their plaint, originally framed against both partners, with a view to making the firm liable for the amount of the calls, so as to sue Bhaji Zutani only, who alone was alleged to have signed the articles and memorandum of association in the name of Devji Bhaji, and to make him personally liable as the holder of the shares. *Wesskersheim's Case*, L. R., 5 Ch. 4p., 831, distinguished. *LONDON, BOMBAY, AND MEDTERBARAHAY BANK v. BHANJI ZUTANI* [I. L. R., 2 Bom., 116]

22. Compromise—Failure to prove—Right to succeed on ground not alleged.—Where the plaintiff sued to have a deed of compromise set aside as having been fraudulently entered into behind his back and without his knowledge, and failed to prove any fraud or collusion—*Held* that he was not entitled to a decree on the ground taken on

VARIANCE BETWEEN PLEADING

AND PROOF—continued.

2. SPECIAL CASES—continued.

Judge agreed with the first Court as to the merits of the case, but reversed its decree on the ground that the plaintiff was not entitled to succeed on a state of facts inconsistent with the case set forth in the plaint, observing that a plaintiff ought not to be allowed to change his cause of action. *Held* by the High Court, on second appeal, that the decree made by the first Court in favour of the plaintiff did not in any way proceed upon a cause of action different from that made in the plaint, and that the cause of action remained the same, namely, the right of the mortgagor to redeem from a mortgage. A plaintiff ought not to be allowed to alter his case so as to convert a suit of one character into a suit of another and inconsistent character. *LAKSHMAN BHATTAR v. HARI DINKAR DESAI* . . . I. L. R., 4 Bom., 584

36. Alteration of case from that made in plaint.—Upon a mortgage of land made little less than sixty years before the present suit, a decree followed in 1825 to the effect that an account having been taken of what was due on the mortgage, the mortgagor might at any time make a tender of such mortgage-money with interest up to date, and require that the land should be restored. The plaintiff, representing the interest of the original mortgagor, sued for redemption of the mortgage, treating the above decree as regulating the rights of the parties from the time when it was made. *Held* that the plaintiff, not having sought by his plaint to redeem the mortgage, or alleged that there had been acknowledgment, could not in the present appeal fall back on a right to redeem such mortgage, although the latter might be within limitation, as that would be to make a case different from the one tried and decided in the Courts below. Accordingly, the suit had been properly dismissed. *HARI RAVJI CHITRAVANKAR v. SHIVRAJI HORMASJI SHET*

[I. L. R., 10 Bom., 461

37. Suit for redemption by purchaser of equity of redemption—Evidence given by defendants of other mortgage than the mortgage in respect of which suit brought—Right of plaintiff to have plaint amended and the question of latter mortgage determined.—The plaintiff as purchaser of the equity of redemption sued for redemption. He alleged a mortgage, dated A.D. 1849, for Rs. 175. The defendants admitted a mortgage, but alleged that it was executed at a different time and for a larger sum. After the evidence was given, but before the judgment was delivered, the plaintiff applied to amend the plaint and to set up the mortgage admitted by the defendants. His application was refused, and the Court dismissed the suit on the ground that he had failed to prove the particular mortgage alleged in the plaint. The District Judge confirmed the decree, but observed that there probably was a mortgage for the larger sum as alleged by the defendants. On second appeal, *Held*, reversing the decree and remanding the case, that the plaintiff was entitled to have the question of the mortgage for the larger sum inquired into. *CHITMAN v. SAKHARAJ*

VARIANCE BETWEEN PLEADING

AND PROOF—continued.

2. SPECIAL CASES—continued.

ought not to be allowed to ask the Court to determine whether the original debt for which the hypotheca was given had been paid off as the defendant alleged, and the suit could not be treated as a suit for the original debt. *Gossain Ram Kissan v. Mian Jan Sheik* . . . I. C. W. N., 710

33. Mortgage—Suit for redemption—Decree on mortgage set up by defendants and not on that alleged by plaintiff—In a suit to redeem, the plaintiff produced a mortgage the genuineness of which the defendants denied, but they produced a mortgage from the plaintiff's ancestors to their ancestors. The Principal Sudder Ameen made a decree for the restoration of the lands according to the terms of the mortgage produced by the defendants. The Civil Judge reversed the decision. *Held* on special appeal that the Principal Sudder Ameen was justified in making the decree which he gave, it not being inconsistent with the relief prayed for by the plaintiff. *NICHOL KANDYIA KUTTI KUTTI NAIR v. VALIA PUDIGAI KUNHAMAD KUTTI LABACCAR*

[4 Mad., 359

34. Evidence given of other mortgage than the mortgage in respect of which suit brought—Evidence to entry as occupant how far admissible.—The plaintiff sued to redeem certain lands alleged to have been mortgaged by his ancestor to the ancestors of the defendants in 1823. At the hearing the deed of mortgage in respect of which the suit was brought was produced, but another mortgage of about the same date was produced and proved by the plaintiff. The lower Courts passed a decree for the plaintiff. The defendants appealed. *Held* (reversing the decree of the lower Courts) that where a particular instrument is sued on as the basis of a right, it is incumbent on the plaintiff to establish his case on that particular cause of action, not on a cause of action, merely bearing the same common name, or of the same description, and so included in the same class. Under s. 35 of the Evidence Act, I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such an entry as facts in another case. *GOVIND-RAV DESHMUKH v. RAGHO DESHMUKH*

[I. L. R., 8 Bom., 543

35. Change of nature of suit.—The plaintiff sued to redeem a mortgage, alleging that it was made in the year A.D. 1821 for Rs. 25. The defendant admitted the mortgage, but alleged that it was made in A.D. 1791 for Rs. 110, and contended that the suit was barred by limitation. The Subordinate Judge held that the mortgage had been made for the amount and at the date alleged by the defendant, but that the suit was not time-barred, as the mortgagor's title had been acknowledged by the mortgagee within the period of limitation. He accordingly made a decree for redemption on terms consistent with the plea of the defendant, but opposed to that of the plaintiff. On appeal, the Assistant

VARIANCE BETWEEN PLEADING

AND PROOF—continued

38. Cases of action

set out in plain—Burden of proof—Civil Procedure Code (1853), s. 60—Suit for redemption of mortgage—A plaintiff is only entitled to succeed upon the case of action filed by him in his plaint. 50, where plaintiff came into Court alleging a mortgage of the year 1847 made by their predecessor in title in favour of the defendant and seeking to redeem the mortgage of 1853, and it was found that the plaintiff had failed to prove the mortgage of 1853, it was held that the plaintiffs were not entitled in that suit to a decree for redemption of other mortgages which might be found to subsist between the parties, but which formed no part of the cause of action upon which the plaintiffs came into Court.

39. Mortgage and co

right of redemption—The plaintiff sued to redeem a loan of 1859. The loan was not proved, but it appeared that the defendant in possession had in various documents admitted that they were loan-dates under the plaintiff's predecessor in title. The subordinate judge held that the loan to which the admissions related could not have been executed before 1853, in which was said to have passed a decree for redemption. He held that the plaintiff, having failed to establish the loan on which the suit was based, should not have been allowed to fall back upon some other as to which the defendant had made the admissions in question. *Kunja v. Pillai*, 1884, 403 I. L. R., 18 Mad., 403.

40. Mortgage and

on inadmissible evidence for want of registration—Secondary evidence—*Indraiah v. Subbarao*, 1884, 403 I. L. R., 18 Mad., 403.

VARIANCE BETWEEN PLEADING

AND PROOF—continued

41. Suit for redemption of mortgage property brought as donee—Title of plaintiff as receiver—In a suit for the redemption of an immovable property brought by the plaintiff as receiver, the plaintiff is not to be treated as a receiver, but as a plaintiff, and the Court is entitled to recover a third collection, and the Court finds that a large balance in favour of the mortgagee still exists, the plaintiff is not entitled to a conditional decree, but the suit should be dismissed. *Hyderabad Lat v. Batta Koon*, 1884, 403 I. L. R., 18 W. R., 408.

42. Proceeds

Where a mortgagee sues to recover possession of the mortgaged property on the ground that the loan has been paid off from the assets of the estate and that no mortgagee is entitled to recover a third collection, and the Court finds that a large balance in favour of the mortgagee still exists, the plaintiff is not entitled to a conditional decree, but the suit should be dismissed. *Hyderabad Lat v. Batta Koon*, 1884, 403 I. L. R., 18 W. R., 408.

43. Failure of claim to enforce lien—Con

possession for breach of contract to give lien—*One mortgagee v. Another*, 1884, 403 I. L. R., 18 W. R., 408.

44. Mortgage—Suit to enforce hypothecation—Compe

nation for breach of contract—*Almeida v. D'Almeida*, 1884, 403 I. L. R., 18 W. R., 408.

VARIANCE BETWEEN PLEADING

2. SPECIAL CASES—continued.

property, yet it was not equitable or proper that, as regards the money-claim, the mortgagee should be action was disclosed, whether the suit was regarded as one for compensation in damages for breach of contract, or for money lent, and the suit should be determined on its merits. *SHEO NARAIN v. JAI GOBIND*. I. L. R., 4 All., 281

45. Partition—Failure of suit—Right to declaration of share.—Where the main object of a suit framed and valued as a suit for partition of a portion of the estate fails, the plaintiff is not entitled to turn round and ask for a declaration as to the extent of his share. *RUTUN MONEE DUTT v. BROJO MONOH DUTT*. 22 W. R., 333 Affirming S. C. 22 W. R., 11

46. Possession—Movable property—Making different case on appeal.—In a suit for delivery over to plaintiff of papers said to be in the possession of defendant, the answer of the latter was that he had made over the papers to the plaintiff's son. This plea was put in issue in the first Court, which found that some papers had been delivered as alleged, and made a decree ordering the delivery of certain other of the papers. On appeal, the attention of the Judge was principally directed to the point whether the receipt of the papers by the plaintiff's son was a receipt by him as plaintiff's agent. Held that this point was a departure wholly from the case made below, and ought not to have been entertained on appeal. *PURCHANUN ROY v. THEOTYCKHOLOHINEE DOSSER*. 14 W. R., 486

47. Imovable property—Separate acquisition.—Held that the question of possession was not a proper one for decision when a plea of limitation was overruled, and the claim was found to be based, not on the fact of possession, but of the claimant being a member of the joint family and the property acquired by joint funds. *NUND RAM v. CHOOTOO*. 1 Agre., 255

48. Possession, Suit for—Acruel of cause of action—Limitation.—In a suit by an execution-purchaser to recover possession of landed property, where defendant pleads limitation and plaintiff proves facts from which the Court is unable to draw conclusions of law for itself, plaintiff ought not to be strictly bound to the accrual of the cause of action alleged in his plaint, so long as that arose within twelve years before commencement of the suit. *MARIAM BEGUM v. RYER CHURN DUTT*. [13 W. R., 269

49. Misdescription of lands—Identification.—Where lands claimed under a certificate of sale as being in one village are found to be in another, it is open to the plaintiff to show that there has been a misdescription, and that, although the name of the former was used, the intention was to convey the lands he claimed.

VARIANCE BETWEEN PLEADING AND PROOF—continued.

2. SPECIAL CASES—continued.

situate in the latter. *RAKGOBAL BARICK v. SHIB PRASHAD SIKHAR*. 12 W. R., 483

50. Failure to prove pottah.—In a suit for possession by two raiyats claiming under different pottahs from the same zamindar, when the defendant's pottah fails, he still has a right to have a judicial determination of his claim to occupancy. *BYDNATH SHAMA v. JADAV CHANDER SHAMA*. 3 W. R., 208

51. Suit for possession on specific title—Right of occupancy.—A plaintiff who succeeds in proving the facts stated in his plaint as necessarily implying a right of occupancy may succeed in a suit for possession, even though he does not prove the title on which he specifically relied. *SURJOO PRASHAD v. KASHNEE RAUT*. [21 W. R., 121

52. Decree on ground not alleged in plaint.—The plaintiff sued for a declaration of mitasi mokurmati rights to certain lands and for mesne profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendant. Held that the lower Courts were wrong in giving the plaintiff a decree for possession on the ground of occupancy right, he not having claimed such relief in his plaint. *Bidyot Deb v. Bidyot Deb*, 24 W. R., 444, followed. *BRINDABAN CHANDER SIKHAR v. DHUNNJOY NUSARKUR*. [I. L. R., 5 Cal., 246; 4 C. L. R., 443

53. Adverse possession—Issues.—The plaintiff sued to recover possession of certain land alleging that it was lakhatraj land, which he had purchased from a third party. The Court of first instance found that he had not proved the title he alleged, and although it had been contended at the hearing that a title by twelve years' adverse possession had been proved, the Court held that it was not proved, and that, as it was not alleged in the plaint and no issue was raised as to it, the plaintiff was not entitled to succeed, and accordingly dismissed the suit. The plaintiff appealed, and one of his grounds of appeal was that he was entitled to succeed by virtue of the title of adverse possession proved. The lower Appellate Court considered that the plaintiff had proved that he and his vendor had held adverse possession for a period of over twelve years and gave the plaintiff a decree on the strength of that title. The defendant appealed to the High Court, and it was contended on his behalf that the plaintiff was not entitled to succeed upon a title of adverse possession when it was not alleged in his plaint, and no issue had been laid down in respect of it. Held that, as the suit was one for possession, and the defendant had expressly notice in the lower Appellate Court that the plaintiff relied on the title of adverse possession, and as he took no objection, on the ground that he should be allowed an opportunity to call evidence to rebut it, and as he had consequently not been prejudiced by the course adopted by the lower Appellate Court, the decree of that Court should be confirmed. *Bidyot*

54. Relief granted on a different ground from that asked for.—Plaintiff's suit was that they were co-owners with B of a certain property as members of a joint family under the Mitakshara law; that after B's death a 31 manas was made of 11 manas share by A to her daughter.

55. Defendant asked as to her daughter's share by A to her daughter.

56. Defendant asked as to her daughter's share by A to her daughter.

57. Defendant asked as to her daughter's share by A to her daughter.

58. Defendant asked as to her daughter's share by A to her daughter.

59. Defendant asked as to her daughter's share by A to her daughter.

60. Defendant asked as to her daughter's share by A to her daughter.

61. Defendant asked as to her daughter's share by A to her daughter.

62. Defendant asked as to her daughter's share by A to her daughter.

63. Defendant asked as to her daughter's share by A to her daughter.

64. Defendant asked as to her daughter's share by A to her daughter.

65. Defendant asked as to her daughter's share by A to her daughter.

66. Defendant asked as to her daughter's share by A to her daughter.

67. Defendant asked as to her daughter's share by A to her daughter.

VARIANCE BETWEEN PLEADING
AND PROOF—continued.
2. SPECIAL CASES—continued.

she was jointly entitled, was not allowed to succeed in the suit where it was shown she was only entitled to a less share in her own separate right. *HURRO MOORE DOSRA v. ONOOROO CHUNDRA MOORRIE* [2 W. R., 461]

66. *Claim to exclusive possession—Proof of right to joint possession.*—When a plaintiff in a suit asks for one thing (e.g., exclusive possession), a Court ought not to give him another thing (e.g., joint possession). *BRIGOTYAN CHATTERJEE v. LUKHUN SINGH v. NURPUR SINGH* [12 W. R., 248]

67. *Claim to separate possession—Proof of joint possession—Alteration of claim.*—When a plaintiff who claims property on the allegation that he purchased it from a person to whom it exclusively belonged, fails to prove that the property was the separate property of his vendor, he cannot have a decree for the share of the property to which his vendor was entitled as a member of a joint family. *GOUT BENARKEE RAM BHUG-GUT v. SHEORJITUN KOONWAR* [10 W. R., 243]

68. *Suit for exclusive possession—Joint ownership proved at hearing—Procedure.*—Exclusive possession can only be awarded on proof of exclusive title. If a case not alleged by the plaintiff is disclosed in the evidence, the Court can allow it to be set up, provided a specific issue is raised on it, and the defendant is given an opportunity of meeting it. *PARANSHAM v. MIRAJI* [1. L. R., 20 Bom., 569]

69. *Suit for exclusive possession—Proof of hearing of joint owner-ship—Procedure.*—The plaintiff sued for possession of certain land. The lower Court held that the land was the joint property of the plaintiff and defendant, but finding that the plaintiff had been in exclusive possession allowed his claim and gave him a decree. On second appeal, *Held* that exclusive possession could not be awarded unless exclusive title was proved. On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit. *NANA v. APPA* [1. L. R., 20 Bom., 627]

70. *Failure of proof of right to sole possession—Decree on admission of defendant of joint possession.*—Where a plaintiff sued for sole possession and a declaration of sole title, and the defendant admitted that he was in joint possession, but the plaintiff went on with his suit in order to get a decree that he was solely entitled and in sole possession, and failed to prove his case, he was held not entitled to a decree founded on joint possession. *LUKHUN SINGH v. NURPUR SINGH* [16 W. R., 311]

VARIANCE BETWEEN PLEADING
AND PROOF—continued.
2. SPECIAL CASES—continued.

the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Raja of Tippera, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmdar, and not the Raja, had granted the lands in dispute as brinjar, but not in favour of the person through whom the plaintiff claimed. The Court, however, passed a decree in favour of the plaintiff, as he had been unlawfully dispossessed. *Held* that the plaintiff, having failed to prove the case as set up by him and upon which he claimed, could not be entitled to a decree upon grounds other than those stated in the plaint. *ISWAR CHANDRA CHUCKRABORTY v. BISTU CHANDRA CHUCKRABORTY* [3 B. L. R., Ap., 97: 12 W. R., 32]

62. *Failure to prove case—Changing case on appeal.*—Each of two prioritors, A and B, separately mortgaged the whole of the joint property to different persons. B's mortgagee, who was prior in time, obtained a decree on his bond, sold and purchased the house. In a subsequent suit for continuation of right and possession by A's mortgagee, he charged that the other bond and decree were fraudulent and collusive, and that B had no found to be false by the lower Appellate Court. *Held*, on special appeal, that the plaintiff could not recede from the case he had made in the lower Courts, and claim to be entitled to a decree for A's interest in the house. *DURJUN SAHOO v. PARAG RAY* [2 C. L. R., 538]

63. *Failure to show alternative case—Right to change case in special appeal.*—Suit for possession of certain property as part of a joint family property sold by a widow without authority. Plaintiff applied to appeal specially on the ground, but could cite no authority in support of it, that when the eldest member and manager of the family purchases out of his own separate funds, because the family is joint, the property must be considered as joint property. Having failed in this character, the Court declined to allow him in special appeal to come in as a reversioner, and ask for a decree declaring the widow's act void as against reversioner. *MAHMO FERRAH v. LATRA JEEVUN LALL* [17 W. R., 98]

64. *Joint claim—Right to succeed on proof of separate title.*—Where the plaintiffs in a suit put forward a joint claim, it is not enough that one of them makes out his title; the suit should be dismissed unless the joint claim is established. *RAY COMUL CHUCKRABORTY v. NUND RAY COOTAL* [10 W. R., 262]

65. *Joint claim—Right to succeed on proof of title to less share separately.*—A plaintiff, suing on the ground that

VARIANCE BETWEEN PLEADING AND PROOF—continued
2 SPECIAL CASES—continued
76. From omission. Suit for—

76. From omission. Suit for—
GINDHAR SAKHO 24 W. R., 365
Principal and agent—Suit
by principal against agent—Failure of suit on
grounds pleaded—A. J. and H., its agent who
had appointed J. to act in the matter of the agency,
for money belonging to it which H. had paid J. for
the purposes of the agency and which was J.'s
grounded for J. claiming the same on the
ground that J. had been appointed by H. to act in the
matter of the agency with authority but instead of
dismissing the suit with reference to this finding,
gave the plaintiff judgment a decree against H. on the
ground that he had not exercised ordinary prudence
in selecting J. as an agent for his principal.
Held that, inasmuch as the plaintiff had not
claimed relief on the ground that H. had failed in
his duty in naming J. as an agent for his principal,
but on the ground that J. had been appointed with-
out authority and had failed to prove the case, the
suit should have been dismissed. HALLISTON &
LARD MONROE BAKER OF INDIA

77. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

78. Failure of plaintiff to prove alleged rate
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

79. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

80. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

81. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

82. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

83. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

84. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
failed to prove the facts alleged by him, it is held that
the rate of the Court to ascertain what was the fair
rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

VARIANCE BETWEEN PLEADING AND PROOF—continued
2 SPECIAL CASES—continued
71. Suit for possession—

71. Suit for possession—
restoration to the sort of possession plaintiff had
that
the
right be sought to have a decree, and not be left to
bring another suit. RAJESHORE BUDHAK &
HERR MONAY BUDHAK 10 W. R., 196
Distinguishing from BHOOMKATH CHATTERJEE &
LOCHAN MOHAN DAKAR 10 W. R., 248

72. Claim to share
of property as being partitioned—Relief inconsistent
with allegations on plaint—in a suit to
recover a quantity of land alleged to have formed
part of a joint estate which had descended to plaintiff
and his brothers, but which was subsequently divided

73. Suit for possession
on allegation of partition—Failure to prove
division—Change of case on appeal.—Plaintiffs,
being members of a joint Hindu family alleging
division and a sale to them by other members of
their share in the family property more than twelve
years before suit, sued to eject a more recent par-
ty. The plaintiffs failed to prove division as
alleged. One of the members of the family who was
in possession of the property to which the sale deed
related did not join in executing it. Held that the
plaintiffs, having failed to prove division as alleged,
were not entitled in second appeal to have their suit
treated as a suit for partition. MATTARJEE &
L. R. T. Cule, 234

74. Claim to pro-
perty on separate title—Right to decree on joint
title.—The plaintiff alleged in his plaint that the
defendant had executed a sale, or charge, upon ground
to which he, the plaintiff, was separately entitled.
The lower Appellate Court found that the land in
dispute was the joint property of both parties, and
that the defendant was not at liberty to erect the hut
without the joint permission of the plaintiff, and
plaintiff was not entitled to a judgment upon a
ground which was inconsistent with the case set out
by his plaint. CHANDRA MITRA v. MANES
CHANDRA MITRA 13 W. R., 11, 12 W. R., 60

75. Failure to prove contract—Claim for rent
of rent—Failure of plaintiff to prove alleged rate
of rent—Interstatement of proper rate—Delay of
Court—Form of decree—in a suit for arrears of
rent at certain alleged rates in which the plaintiff
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rate, unless it is aided to do so. The case of
RANOO DINGH & SINGH vs. L. R. T. Cule,
229, does not lay down a contrary rule. HARR
BANK GORE & BARNARD DINGH

VARIANCE BETWEEN PLEADING AND PROOF—continued.

2. SPECIAL CASES—continued.

the property and a certain sum for its use and occupation by the defendant. He also claimed to recover the same sum as damages for the retention of the estate by the defendant, from the date up to which the defendant had paid rent. The agreement between the parties was contained in certain letters which were unstamped. *Held* that, although the claim to relief made by the plaintiff on the basis of the contract must fail, because there was no evidence of the contract on which the Court could act, yet he could fall back on his claim to recover damages for the use and occupation of the land, as the defendant could not defend his possession, being equally incompetent with the plaintiff to rely on the terms of a contract of which he could not give proof, and as he did not deny the use and occupation alleged, he had no answer to the claim for damages. *MASTERS v. VALLAN* 5 N. W., 65

80. *Evidence of nuggi rent*.—In a suit for a balance of rent on the allegation that defendants cultivated a portion of plaintiffs' jaghir as bhovli tenants, where defendants denied that they were such tenants and pleaded a mokurri pottah, *Held* that, even on the defendants failing to establish their plea, the suit could not succeed, as the plaintiffs failed to make out their case, and it appeared that the defendants were holding the whole jaghir as a nuggi rent. *LUCHMEERDAS PATROK v. KUGHOODAS SINGH* 24 W. R., 284

81. *Suit for declaration*.—*Suit under Bengal Rent Act, 1869*.—Where the plaintiff sued under Bengal Act VIII of 1869 for a declaration that certain land was mal, as well as for assessment of rent thereon and for arrears of rent at the rate assessed, and the suit was dismissed, and on appeal the plaintiff abandoned the two last points in his claim and asked merely for a declaratory decree, *Held* that the lower Appellate Court ought, notwithstanding the plaintiff had elected to sue under the Rent Act, to have proceeded with that part of the case, and disposed of the appeal as to that only. *ANAND MOYEE DOSS v. RAY MOYEE DOSS* 20 W. R., 14

82. *on allegation of holding specific quantity of land*.—*Suit for kabuliati*.—In a suit for a kabuliati, on the allegation that the defendant is holding a specific quantity of land under him, if the plaintiff's allegations are disproved, and the relation of landlord and tenant is not established, the plaintiff's suit must altogether fail. *YAKOOB ALI v. KARNNOOLAH* 8 W. R., 329

83. *Suit for rent*.—*The plaintiff, having sued for rent upon a kabuliati and failed to prove it, is not entitled to a decree if he shows that the defendants had paid him rent for a number of years, the Court observing that it would not be the exercise of a sound discretion to allow a party who relies upon a document to set up a fresh case when an issue as to*

VARIANCE BETWEEN PLEADING AND PROOF—continued.

2. SPECIAL CASES—continued.

the execution of such document is found against him, and there are good reasons for believing that the document is not genuine. *MURDOCH v. MONTGOMERY* 1 W. R., 23: 1 Ind Jur., O. S., 9

84. *Suit for pottah at fixed rate of rent*.—*Plaintiff in proof*.—In a suit brought by a raiyat to obtain a pottah at a fixed rent, under s. 3 of Act X of 1859, on the ground that the lands have been held at a fixed rent which has not been changed from the time of the permanent settlement, if the plaintiff fail in proving such a holding, he is not entitled in that suit to have a decree under s. 5 for a pottah at a fair and equitable rate. *DOORGA MAHTOON v. KANHYE LATHI AGRA* [Marsh., 371: 2 Hay, 422]

85. *Suit on kabuliati which plaintiff fails to prove*.—*Plaintiff sued upon a kabuliati, and filed a pottah in support of it. The pottah having been rejected, and the kabuliati not proved, he was held not entitled to fall back on a general statement that he has a jote pottah; that the lands in dispute are part of the same; and that he can oust the defendant, who was duly in possession. GORIND CHUNDER LAHORY v. JADINE, SRINER & Co.* 7 W. R., 163

86. *Right to pottah*.—*Right to have fair and equitable rate of rent fixed as occupancy raiyats*.—*The plaintiff sued as raiyats to obtain a pottah corresponding with a kabuliati which they said had been taken from them by the defendants, who were 12-anna shareholders in the land, and, according to an alleged promise, to give them a pottah. The plaintiffs failed to make out the ground on which they relied, but the lower*

80. *Evidence of nuggi rent*.—In a suit for a balance of rent on the allegation that defendants cultivated a portion of plaintiffs' jaghir as bhovli tenants, where defendants denied that they were such tenants and pleaded a mokurri pottah, *Held* that, even on the defendants failing to establish their plea, the suit could not succeed, as the plaintiffs failed to make out their case, and it appeared that the defendants were holding the whole jaghir as a nuggi rent. *LUCHMEERDAS PATROK v. KUGHOODAS SINGH* 24 W. R., 284

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82. *on allegation of holding specific quantity of land*.—*Suit for kabuliati*.—In a suit for a kabuliati, on the allegation that the defendant is holding a specific quantity of land under him, if the plaintiff's allegations are disproved, and the relation of landlord and tenant is not established, the plaintiff's suit must altogether fail. *YAKOOB ALI v. KARNNOOLAH* 8 W. R., 329

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Appellate Court, being of opinion that the plaintiffs had made out a right of occupancy under the law and were entitled to obtain a postab from the

be determined, and as it rested on a ground not taken by the plaintiffs, who came into court on a special contract. If the plaintiffs' right to a postab had rested on the ground of their being occupiers, they might claim a postab from all the 16 annas shareholders, who ought to have been made parties and the case remanded for trial by the first Court. *UTTERA HOSEER v. HAKARAT HOSE* [20 W. R., 75]

87. *Suit for rent—*—Where a landlord sued a tenant for arrears of rent alleged to be due under a khatiat, and the Court found that such khatiat had been executed by the tenant, although he had occupied the land, the landlord was held not entitled to have a further trial of the question whether any and what amount of rent was due on account of the tenant's occupation of the land. *UTTERA HOSEER v. HAKARAT HOSE* [13 B. L. R., 243; 21 W. R., 208]

86. *No alternative claim for use and occupation—Damages for use and occupation.*—In a suit for rent, when no alternative claim is made for use and occupation, no damages can be decreed for use and occupation. *LUKHA KANTO DASS CHOWDHURY v. BANGORAT LAKHER* [3 B. L. R., 213; 21 W. R., 209, and *supra* *Narayan Singh v. Bhat Lal Thakur*, 1 L. R., 22 Cal., 72, 73; *referred to* and followed. *Nigamand Ghose v. Kishore, W. R., 27 Cal., 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000]*

85. *Suit on khatiat—Amendment of plaint—Decree for rent on failure to prove rent.*—In a suit on a khatiat, where no alternative claim for rent at an old rate is in words expressly asked for in the plaint (although it is decreed by the Court to allow an alternative claim to be tried, and where the khatiat is not proved, the plaintiff is to be restored to the old rate), the plaintiff is not bound to amend the plaint or the khatiat, and to allow an alternative claim to be tried, and where the khatiat is not proved, the plaintiff is to be restored to the old rate. *UTTERA HOSEER v. HAKARAT HOSE* [13 B. L. R., 243; 21 W. R., 208]

80. *Suit for rent—Statement in plaint—Allegation of a suit for enhancement of the plaintiff's right to be made in the plaint.*—In a suit for enhancement of the plaintiff's right to be made in the plaint, an allegation of a suit for enhancement of the plaintiff's right to be made in the plaint, is not a statement in the plaint, and does not constitute a defence. *UTTERA HOSEER v. HAKARAT HOSE* [13 B. L. R., 243; 21 W. R., 208]

79. *Suit for rent—Failure to prove rent—In a suit for rent, where a plaintiff is allowed to amend his plaint, he is not bound to amend his plaint, and does not constitute a defence. *UTTERA HOSEER v. HAKARAT HOSE* [13 B. L. R., 243; 21 W. R., 208]*

78. *Suit for rent—Failure to prove rent—In a suit for rent, where a plaintiff is allowed to amend his plaint, he is not bound to amend his plaint, and does not constitute a defence. *UTTERA HOSEER v. HAKARAT HOSE* [13 B. L. R., 243; 21 W. R., 208]*

77. *Suit for rent—Failure to prove rent—In a suit for rent, where a plaintiff is allowed to amend his plaint, he is not bound to amend his plaint, and does not constitute a defence. *UTTERA HOSEER v. HAKARAT HOSE* [13 B. L. R., 243; 21 W. R., 208]*

76. *Suit for rent—Failure to prove rent—In a suit for rent, where a plaintiff is allowed to amend his plaint, he is not bound to amend his plaint, and does not constitute a defence. *UTTERA HOSEER v. HAKARAT HOSE* [13 B. L. R., 243; 21 W. R., 208]*

VARIANCE BETWEEN PLEADING AND PROOF—continued.

2. SPECIAL CASES—continued.

100. *Allegation of title by purchase—Failure to prove alleged title—Possession, Title by.*—In a suit for declaration of title to and possession of certain property on the allegation of purchase and subsequent forcible ouster it was held that the plaintiff, having failed to prove the purchase or the forcible dispossession, could not succeed on mere proof of twenty years' possession. A plaintiff who sues on one title cannot succeed on another entirely different. *Huro Soondra Debria v. Unnopoorna Debria*. 11 W. R., 550 *Biroya Debria v. Bydonath Deb* 24 W. R., 444

101. *Failure to establish particular title—Title by long possession.*—Where a plaintiff brought a suit to establish his title, and the lower Court, on a trial of the issue, though the title was not proved, yet gave plaintiff a decree on the ground of his being in possession for a long time. *Held* that the lower Court ought not to have given a decree upon a ground not suggested in the plaint or in the issues tried. *Bhaxgo Muttar Birra v. Mahomed Wasit* 25 W. R., 315

102. *Failure to prove particular title—Title by right of occupancy—Act X of 1859, s. 6.*—In a suit for possession of land after purchase, where defendant pleaded that he had long held under a miras potbah which both the Courts below found to be false. *Held* that the defendant could not be allowed in special appeal to come in for the first time with an allegation of a new and separate title, viz., a right of occupancy under s. 6, Act X of 1859. *Sooroo Koormar v. Gungadhar Roy* 12 W. R., 80

103. *Specific title—Title by possession—Form of plaint.*—Where a plaintiff who fails to prove a specific title which he sets up, yet causes it to appear that he has had a clear bond *fide* possession from which the Court can infer a good title, the Court will not shut him out in consequence of the mere form of the plaint. *Kylash Kamrur Dossia v. Juroo Bashir Dossia* 22 W. R., 381

104. *Allegation of mokurari right and failure to prove it.*—In a suit to recover possession of land which defendant alleged himself to have held for more than twelve years under a mokurari lease, where the lower Appellate Court, finding that defendant failed to prove his mokurari right, declared he had no title to hold as a squatter. *Held* that, notwithstanding the failure of the defendant to prove his mokurari lease, the lower Court ought to have found what was the nature of the occupancy, and how long it had subsisted. *Jorawar Singh v. Khyray Adl* 10 W. R., 380

105. *Suit in one capacity, proof of right to succeed in another.*—A suit was brought by a Hindu widow to recover her share

VARIANCE BETWEEN PLEADING AND PROOF—continued.

2. SPECIAL CASES—continued.

95. *Specific performance—Suit to enforce contract of betrothal—Failure to prove complete betrothal.*—The plaintiff, on behalf of her infant son, sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that under the Hindu law a betrothal was the same as marriage and could not be repudiated, and that the defendant had on demand refused to give up *M B*. *Held* that the suit having been brought on the allegation of a perfect betrothal equivalent to marriage, it could not be tried and decided by the Court as if it were a suit for damages on account of breach of contract. *Nowbat Singh v. Lad Koore* 5 W. R., 102

96. *Title—Setting up different title from that alleged.*—The plaintiff cannot be allowed to set up a different title from that on which he sues and fails to prove. *Isnan Chunder Chowdhary v. Sharoda Goopthah* 12 W. R., 487

97. *Suit for recognition of adoption—Right to show title by inheritance.*—A distinct suit for the recognition of an adoption having totally failed, the plaintiff is not entitled to fall back on his right by descent. *Srinagobind Singh v. Odit Narain Singh* W. R., 4

98. *Failure to prove adoption—Right to succeed by inheritance—Civil Procedure Code, s. 146—Failure of plaintiff to prove unnecessary averments—Decree on admission of defendant.*—In a suit brought by an undivided member of a Hindu family to set aside a sale made by the managing member and to recover a moiety of the land sold, the plaintiff alleged that he had been adopted by his deceased uncle and claimed as adopted son. The purchaser denied the adoption, alleged that plaintiff was the natural brother of the vendor, and justified the sale under Hindu law. The lower Courts found that the adoption was not proved, and, on the plaintiff urging that if the adoption was not proved, yet he was entitled to recover by virtue of the admission that he was the natural brother of the vendor, held that the latter claim was inconsistent with the claim as adopted son. The suit was therefore dismissed. *Held*, on appeal, that the suit was improperly dismissed, and that, if the purchaser could not justify the sale, the plaintiff was entitled to succeed. The rule that the decree should be in accordance with what is alleged and proved is intended to prevent surprise, and is not applicable to a case in which the defendant's own admission is adopted as the ground of decision against him. *Arayya v. Ramreddi* [I. L. R., 11 Mad., 367

99. *Title of separate acquisition by purchase—Setting up inconsistent title by joint purchase.*—The plaintiff, having set up a title by sole purchase, was held not at liberty to change his case entirely, and to come in and set up another and inconsistent title, founded on inheritance or joint purchase. *Doss Raj Doss v. Mohendro Roy Decha* 18 W. R., 274

VARIANCE BETWEEN PLEADING AND PROOF—continued

2. SPECIAL CASES—continued.

but, (perhaps, the more plausible) explanation in my mind, is that the Court was not convinced that the defendant had not acted in self-defense. The jury was instructed that if the defendant had acted in self-defense, he was not guilty. The jury found in favor of the defendant, and the Court affirmed the verdict. The Court stated that the evidence was sufficient to support the jury's verdict, and that the defendant's actions were justified. The Court also stated that the defendant's actions were not reckless or negligent, and that he was not guilty of any crime. The Court's decision was based on the facts of the case, and the law of self-defense. The Court stated that the defendant's actions were justified, and that he was not guilty of any crime. The Court's decision was based on the facts of the case, and the law of self-defense. The Court stated that the defendant's actions were justified, and that he was not guilty of any crime.

Amendment of

1. I. R. 10 1000, 1000

107
In suit for right of ownership—Decision on case not made in pleading—In a suit brought to establish a right of ownership over certain land—Held it was
into and
ment over
plant over
HATAYGE & LAYARDIAN—A—
[2 Bora, 184
2nd Ed., 184

108. *caption*—*Making case different from that in*
known to the premises of the two parties to the dis-
puted, where plaintiff's claim to use the land had
been put upon his title as owner.—*Held* that, having
failed to make out the case originally set forth in
the petition, plaintiff had no right to fall back upon
a title by prescription.
* *Massachusetts v. Felt*.
* *16 W. H. 84*.
* *Smith by devise*
* *Prosser v. Monte v. Monte*

holder to declare a house subject to attachment in execution as being the property of the judgment-debtor.—Decree for plaintiff on ground that judgment was made on appeal.—The plaintiff's case being that a certain house was the absolute property of his judgment-debtor, and that therefore he (the plaintiff) was entitled to attach it in execution of his writ.

Sent by decree

109.

LAVERGNE
[13 B. L. H., 247 note; 13 W. R., 317
And see LARSEN KATTO BASS CHOWDHURY &
SOMERHALL LITTON
[13 B. L. H., E. B., 213 21 W. R., 317
and HODGKIN HARRIS & HARRIS PHILISTO NATH
[1 L. T. H., 8 CALIF., 898

111. Failure to prove it—Right to decree on defendant's admission.—Where the plaintiff brought a suit for

NOONHILL KAYE Post P. SHAKHATSKAYA, 1910
[13 H. L. R., 210 photo; 20 W. H. R.,
1910] HAS COOKMAN STATION P. (Photo HAS COOKMAN
STATION P. W. H. R., 1901, Vol. X, 1910)
[23 W. H. R., 1910] HETROHNEH SAK P. STRECHT CHUDNEH HUSKONIC

VARIANCE BETWEEN PLEADING AND PROOF—continued.

3. ADMISSION OF PART OF CLAIM

—continued.

112.

case—Right to decree on admission of defendant's dismissal of suit.—In a suit for rent, based upon an alleged settlement, the plaintiff failed to prove such settlement. *Held* that, no issue having been raised as to what was the fair and proper value of the land, the plaintiff was not entitled to have that question determined: his suit must either be decreed at the rate admitted by defendant, or dismissed. *LUTS*

113. *ALI KHAN v. FAKIRA SINGH* . 6 C. L. R., 208

Suit for arrears of rent.—*Failure to prove rate—Decree at admitted rate.*

In a suit for arrears of rent, where the plaintiff fails to prove the rate of rent claimed in the plaint, it is the duty of the Court to find the proper rate of rent payable by the tenant to his landlord, and not to give a decree merely for the rent admitted by the tenant.

114. *T. L. R., 7 Cal., 298; 8 C. L. R., 310*

Suit on new agreement—Failure to prove agreement—Decree at admitted rate.—The defendant held lands under the plaintiff at a certain rate per bigla. The plaintiff brought a suit for arrears of rent on a new agreement alleged to have been entered into by the plaintiff and the defendant, whereby the latter agreed to pay a higher rate per bigla. The lower Appellate Court found that the new agreement had never, in fact, been entered into, and gave a decree for the old rate of rent without going into the question whether it was a fair rent or not. *Held* that the decision was correct. *SUDAR KAZA v. AMZAD ALI*

115. *T. L. R., 7 Cal., 703; 10 C. L. R., 121*

Failure to prove admission of defendant for money rent.—In a suit failed to make out his title to bhowni rent or rent in kind, the first Court, finding that the evidence established a commutation of bhowni rent into rent in money, dismissed the suit with a reservation of the plaintiff's right to sue again for bhowni rent. The lower Appellate Court, agreeing in the first Court's view of the facts, and finding that the defendant admitted that he owed rent in money, decreed the claim to the extent of the admission. *Held* that the lower Appellate Court was right, and that the reservation of right by the first Court was of doubtful operation.

116. *BIBERAN v. BHATU SINGH* . 21 W. R., 438

Omission to make alternative claim—*Suit for rent—Beng. Act VI of 1862, s. 10.*—In a suit for rent, where the claim was at the rate fixed by the revenue officer acting under Bengal Act VI of 1862, s. 10, and was dismissed on the ground that that officer had not the power to assess such rent as he thought proper,—*Held* that the plaintiff, whose claim was not in the alternative, was not entitled to a decree at the rate previously paid. *DWARAKANATH BOSE v. RAM LOCHAN BOSE*

[23 W. R., 465]

VARIANCE BETWEEN PLEADING AND PROOF—continued.

3. ADMISSION OF PART OF CLAIM

—concluded.

117.

Suit for ejectment—*Entry for rent upon admission of different tenure by lord and tenant—Proof of terms of lease—Decree for rent*

defendant.—The plaintiff sued in 1881 to recover certain land and arrears of rent from the defendant alleging that the defendant's ancestor entered on the land as tenant in 1865, under a lease for five years which was not registered. The defendant denied the lease of 1865, admitted that she was the tenant of the land, but denied that she could be ejected, and *Held* (1) that the plaintiff could not prove the tenancy alleged in the plaint, inasmuch as the lease of 1865 was not registered, and therefore could not object the defendant; (2) that the plaintiff was entitled, upon the defendant's admission, to recover from the defendant, in this suit, the amount of rent admitted to be due, and no more. *NANGAI v. RAVAN*

VATAN.

See COLLECTOR T. L. R., 18 Bom., 103

See CASES UNDER HEREDITARY OFFICES ACT (BOMBAY).

See CASES UNDER SEVERAL TENURE.

VATANDARS.

See CASES UNDER HEREDITARY OFFICES ACT (BOMBAY).

VATANDARS ACT (BOMBAY ACT III OF 1874).

See HEREDITARY OFFICES ACT (BOMBAY).

See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

VENDOR.

Petition by—

See REGISTRATION ACT, 1877, s. 73 (1871, s. 73)

VENDOR AND PURCHASER.

1. BILLS OF SALE . 9354

2. BREACH OF COVENANT . 9355

3. BREACH OF WARRANTY . 9356

4. CAVAT EJECTOR . 9359

5. COMPLETION OF TRANSFER . 9360

6. CONDITIONAL SALES . 9366

7. CONSIDERATION . 9366

8. FRAUD . 9370

VENDOR AND PURCHASER—continued.

1. BILLS OF SALE—concluded.

the purchaser's right of action to eject the trespasser or to redeem the mortgage. *Hai Surai v. Dattat-Ray Dattasankar*. I. L. R., 6 Bom., 380

2. BREACH OF COVENANT.

6. Covenant to restore estate

to original owner or heirs at fixed price before selling to another—*Sale under reservation to keep in actual possession or re-sell it to vendor at fixed price—Subsequent alienation—Right of reconveyance.*—Where a share in an estate had been sold under a stipulation that the purchaser should possess it himself as landlord, or, if desirous of parting with it, should restore it to the original owner or his heirs at a fixed price; and the purchaser, having been restrained by this agreement from selling off this property to a third person, had, on his retirement to England, given other persons a farming lease of it for fifteen years,—*Held* that, as the object of the original stipulation was to secure the constant possession of the share to some one with whom the original owner or his heirs, who still retained the residue of the estate, could keep up friendly relations, the grant of the farmer's lease was a violation of the covenant; and that the heirs of the original owner were entitled to have the share in suit conveyed to them at the stipulated price. *Rajat-Mati Sen Lushkur v. Wise*. 25 W. R., 378

7. Covenant repugnant to inheritance created—*Contingent usufructuous "ikramamah—Condition restraining alienation.*—A, a co-sharer in a village, transferred to J, another co-sharer, a 2 annas share by deed of sale. Upon the same date A executed an ikramamah, in which he agreed that he would not collect the rents of the 2 annas transferred to him, that he would not ever demand partition of that share, and that he would not alienate or mortgage it or otherwise exercise proprietary rights over it. It was further provided that in the event of A committing any breach of covenant the sale should be avoided, and the proprietary rights in the 2 annas should revert in A. *Held* that the deed of sale and the ikramamah must be regarded as recording one single transaction, i.e., they must be read together as stating the nature of the transaction entered into upon that date between the plaintiff and the defendant, which on the face of it professed to be a sale of a 9 annas share to the other by the former; and that, in this view, it was clear from the ikramamah that the proprietary title created by the sale-deed was cut down to nil, and limitations placed upon it which rendered it useless as a proprietary right. *Sital Pursad v. Luchmi-Pursad*, I. L. R., 10 Cal., 30, referred to. *MAN-RAM Das v. Ajudhia*. I. L. R., 8 All., 452

8. Implied covenant for title—*Transfer of Property Act (IV of 1882), s. 55, sub-s. 2—English Conveyance Act of 1881, 44 & 45 Vict., c. 41, s. 7.*—In the absence of any contract to the contrary, there is, under s. 55, sub-s. 2, of the Transfer of Property Act, an implied covenant for title on

VENDOR AND PURCHASER—continued.

2. BREACH OF COVENANT—concluded.

the part of the vendor. *Basabadi Sheikh v. Rajabadi Mahan*. I. L. R., 25 Cal., 298

9. Breach of implied covenant for title—*Transfer of Property Act (IV of 1882), s. 55 (2)—Covenant for title, waiver of—Fraud.*—When a vendee, who sues to cancel a sale on the grounds of fraud, misrepresentation, or concealment by his vendor, fails to establish these grounds of relief, he is not entitled to set up in second appeal a case founded on the implied covenant for title under the Transfer of Property Act, s. 55, sub-s. (2).

10. [I. L. R., 15 Mad., 50

Breach of covenant for title—Measure of damages.—A purchaser evicted from his holding is entitled to recover from a vendor who has guaranteed his title the value of the land at the date of the eviction. *Nagaradas Sabhagadas v. Ankrakhan*. I. L. R., 21 Bom., 175

11. [I. L. R., 21 Bom., 175

Transfer of Property Act (IV of 1882), s. 55—Suit for damages for breach of covenant implied in registered sale-deed.—On 8th February 1889 the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession, and the purchase-money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title. The plaintiff now sued on 7th February 1895 to recover with interest the purchase-money and the amount of costs incurred by him in the previous litigation. *Held* that the plaintiff was entitled to the relief sought by him. *Krishnan Nair v. Kanman*. I. L. R., 21 Mad., 8

3. BREACH OF WARRANTY.

12. Suit on warranty—*Known-ledge by purchaser of title being doubtful.*—A purchaser, aware of the doubtful character of the title to the estate he is about to purchase, is justified in taking a guarantee from the seller, who cannot successfully plead to a suit on the guarantee that the purchaser was aware of the facts which induced him to stipulate therefor. *Pathoo Lal v. Radhika Doss*. [3 N. W., 106

13. Sale of whole title—*Estimate of title—Suit for money had and received.*—A vendor legally conveying all his title cannot be sued for money had and received, although the title prove defective. Accordingly, where the plaintiff bought two kamam claims, and sued upon them unsuccessfully,—*Held* that he could not recover the purchase-money from his vendor's representatives, on the ground that the consideration for the payment had failed. *Muhamad Mondin v. Othman Umalah*. I Mad., 390

14. Implied warranty—*Warranty of title by vendor or mortgagor—Right to*

VENDOR AND PURCHASER—continued.

4. CAVIAT EMPTOR—concluded.

Vendor was aware at the time of the sale, sued the vendor for damages. The Munsif decreed the claim on the ground that the vendor had fraudulently concealed the existence of the decree. On appeal the District Judge reversed this decree, holding that, as the purchaser had not insisted on a covenant for title, he must be held to have accepted all risks. *Held* that if there had been fraudulent concealment as alleged, the purchaser was entitled to damages. *GATA-PATHI v. Atagia*. I. L. R., 9 Mad., 89.

5. COMPLETION OF TRANSFER.

25. Oral transfer—Hindu vendor and purchaser.—Land may pass by mere parol between Hindu vendor and purchaser. *MONESH CHUN-DRAS CHATTERJEE v. ISSUN CHANDR CHATTERJEE*. [1 Ind. Jur., N. S., 266]

26. Want of registration.—Sale complete without payment of purchase-money on registration of deed.—A sale might be complete, and it still might be in condition of the contract that the purchase-money was to be paid afterwards, and the deed in evidence of the contract may not be completed. The bare fact of the deed not being registered would not annul a sale if, by mutual agreement, a sale had already been made. *KATRE CHURN GHARE GOSAIN v. LATTA MUDPUR KISHORE*. [7 W. R., 317]

27. Transfer of Property Act (IV of 1882), s. 54.—Transfer of immovable property by unregistered deed.—Deed of which registration is optional—Suit by purchaser for possession when vendor is out of possession.—S. 54 of the Transfer of Property Act is not exhaustive or imperative in requiring that the transfer of immovable property of less than ₹100 should be made only by one of the modes there stated so as to confer a valid title. Where the plaintiff brought from the heirs of *M.*, who were out of possession, their right, title, and interest in certain immovable property, and such property was conveyed to the plaintiff by an unregistered deed, registration of the deed (the property being of value of less than ₹100) not being compulsory,—*Held*, in a suit to recover the property from persons in possession without title, that the sale conferred a valid title on the plaintiff, though not made by registered deed or by delivery of the property. The dictum of Garth, C.J., in *Narain Chander Chuckerbutty v. Dattaram Roy, I. L. R., 8 Cal., 537*, at p. 612, dissented from. *KHATU BIRI v. MADHOKAM BASTOR*. I. L. R., 16 Cal., 622.

28. Transfer of Property Act (IV of 1882), s. 54, para. 3.—Transfer of property of value less than ₹100, by purchaser for possession when vendor is out of possession.—The transfer by sale of tangible immovable property of a value less than one hundred rupees can be effected only by one of the two modes mentioned in s. 54, para. 3, of the Transfer of Property Act, viz., by a registered instrument or by delivery of possession. *Khatu Biri*

4. CAVIAT EMPTOR.—continued.

19. Right of purchaser—*Warranty of title*—Hindu law—Contract—Sale of land in Bombay.—In England the law gives to the purchaser of land a right to have a good title to it shown by the vendor. No such rule appears to exist in the Hindu law, and in contracts between Hindus for the purchase and sale of land in Bombay the intention of the parties must be ascertained from the terms of the agreement without regard to any implication. *DEVSI GHATA v. JIVARAT MUKUNDAS*. [2 Bom., 430; 2nd Ed., 406]

20. Defect in title previous to title shown by conditions of sale.—When it is provided by conditions of sale of land that the vendor shall not be bound to show any title prior to an instrument of a certain date, the purchaser may insist upon a defect of title appearing *ante* and before that date, and if it be proved to exist may rescind the contract and recover back earnest-money, interest, and expenses. *MANOHARJI PRASADJI v. NARAYAN LAKSHMANJI*. 1 Bom., 77

21. Land sold without warranty.—*Purchaser with invalid title*—Liability of vendor.—In the absence of fraud or express warranty of title in a sale of land, the vendor cannot recover from the vendor the expenses incurred in defending a suit for possession brought against him by a third party having a better title. *NARIMONER SINGH DRO v. GORDON STUART & Co.* [1 Ind. Jur., N. S., 356; 6 W. R., 152]

22. Liability of purchaser.—Inquiry as to title.—Division after purchase.—By the rule of caveat emptor, the buyer is bound by law to take care of himself and to see that he buys after satisfying himself that there is a good title. The purchaser is bound to look not only to his own title, but to see that he is properly indemnified by the covenants in his deed of purchase; and if he does not choose to protect himself in this manner, he has no remedy: for if a deed of purchase has been once executed, unless there is an eviction by the vendor or some person claiming under him, the purchaser has no right of action against the vendor. *GOVIND KISHORE DUTT MO-SHORE SHAMA v. CHANDER KISHORE DUTT MO-SHORE SHAMA*. 25 W. R., 45

23. Sale of shares deposited with bank for advance.—Depreciation of security.—Objection to disclose position of shares.—Where a contract has been made for the sale of shares deposited with a bank as security for an advance, the vendor is not bound to disclose the fact to the purchaser when there can be no reason to anticipate such a depreciation of value in the shares as would entitle the bank to refuse to transfer. *NARAYAN SUGOCARAM v. BHAWOO DABRE*. 1 Ind. Jur., N. S., 154

24. Fraudulent concealment by vendor of defect of title.—Absence in sale-deed of covenant for title of purchaser.—Right to damages.—In 1881 a Hindu executed a sale-deed of a house in title. The purchaser, having been ejected from a portion of the house under a decree, of which the

VENDOR AND PURCHASER—continued.

5. COMPLETION OF TRANSFER—continued.

no attachable interest—Transfer of Property Act (IV of 1882), ss. 40, 54, 55 (6) (b)—Trusts Act (II of 1922), s. 91.—Under a contract of sale with respect to certain fields, possession was delivered to the vendee, and the whole of the purchase-money was paid to the vendor, but the transfer was not effected, as the necessary registered conveyance had not been executed. Subsequently a judgment-creditor of the vendor sought for a declaration that the fields were liable to be attached and sold as the property of the judgment-debtor. Before the case was decided by the Court of first instance, a registered conveyance had been executed. Held that the judgment-debtor was nothing more than a bare trustee and had no attachable interest in the property. *Horrasji Maneoji Dadachandji v. Keshav Purshottam, I. L. R., 18 Bom., 18*, distinguished. *Karatiya Nanubhai Manohar Chai v. Man-Sukhraj Vakhatghat I. L. R., 24 Bom., 400*

39. Transfer of Property Act (IV of 1882), s. 54—Sale of land—Non-payment of consideration—Delivery of deed—Completion of purchase.—Under s. 54 of the Transfer of Property Act, though no title passes except upon registration of the conveyance where such registration is compulsory, yet mere registration may not be sufficient to pass a good title; if the parties intend that no title shall pass upon registration till the consideration-money has been paid and the deed delivered, the law will give effect to such intention. Registration is *prima facie* proof of intention to transfer the title, and the party who alleges the existence of a collateral agreement must strictly prove it. *Shero Narain Singh v. Darbari Mahron. 2 C. W. N., 207*

40. Default in completing contract of sale—Partial performance.—In suits arising out of the default on both sides to complete a contract for the purchase and sale of land in the mortgagor, the Court should proceed as a Court of equity, and should look to the acts and conduct of the parties subsequent to the making of the contract as well as the language of the contract itself; and where the contract has been partially performed and the purchaser put into possession of a portion of the land and allowed by the vendor so to continue long after the period fixed for completion of the contract has elapsed, further time should be given by the Court for the performance of the contract in specie. (*Tucker, J., dissentient.*) *Bata Valad Sakria v. Gabari Bavant Kulkarni [2 Bom., 175; 2nd Ed., 168*

41. Conditional contract "subject to approval of title by purchaser's solicitors"—Rescission—Registration Act (III of 1887), s. 17, cl. (b).—An agreement for the purchase and sale of certain immovable property provided that the completion of the contract should be "subject to the approval of the purchaser's solicitors" (naming them), and that, if they should not approve of the title, the vendor should refund the purchase-money and pay all costs incurred by the purchaser in investigating the title. The purchaser's

VENDOR AND PURCHASER—continued.

5. COMPLETION OF TRANSFER—continued.

Chuckerbutty v. Dalaram, I. L. R., 8 Cal., 597 followed. *Ponnayya Goundan v. Muttu Goundan [I. L. R., 17 Mad., 146*

36. Sale of immovable property—Transfer of Property Act (IV of 1882), s. 54—Delivery of possession under deed of sale unregistered where registration is optional—Delivery of property—Share in a tank—Registration Act (III of 1887), ss. 17 and 18—Intention of parties—Question of fact—Second appeal.—The defendants purchased a share in a tank in 1884, and the consideration being of a less amount than ₹100 was unregistered. In 1886 the plaintiff purchased the same share from the same vendor under a registered deed of sale. It was found on the facts that the plaintiff purchased with notice of the defendants' previous purchase, and that the defendants had possession of the purchased share from the date of their purchase. Held (on appeal under the Letters Patent of the High Court) by TRAYAKAN, J., upholding the decision of BAKER, J. (HILL, J., dissenting), that the possession obtained by the defendants was a sufficient "delivery of the property" within the meaning of s. 54 of the Transfer of Property Act. *Makhan Lal Pal v. Bunku Behari Ghose, I. L. R., 19 Cal., 623*, referred to. *Per TRAYAKAN, J.*—It is not necessary that there should be any formal making over of possession. *Per HILL, J.*—When the owner of immovable property of a value less than ₹100 has executed to the intending buyer an instrument purporting to transfer the ownership of the property, and the instrument has not been registered, but the intending buyer has been placed in possession, the effect to be attributed to the delivery of possession depends on the intention of the parties, which is a question of fact that cannot be determined on second appeal. *Gunga Narain Gope v. Kati Churn Goala [I. L. R., 22 Cal., 179*

37. Transfer of Property Act (IV of 1882), s. 54—Vendor and purchaser—Deed of sale—Completion of sale—Registration—Non-payment of consideration—Delivery of deed of sale.—Mere registration of a deed of sale, unaccompanied by delivery of the deed to the vendee, does not make the transaction a completed one. Although under the Transfer of Property Act the sale of a tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument, yet mere registration should not be taken as conclusive that the title has passed. If it was intended by the parties that the title should pass only upon the consideration money being paid, such intention should be given effect to. *Shao Narain Singh v. Dabari Mahron, 2 C. W. N., 207*, approved. *MAVADAN v. RUGHUNADAN PRASHAD SINGH. I. L. R., 27 Cal., 7*

38. Delivery of possession—Payment of the whole of the purchase-money—Registered conveyance not executed—Transfer—Attachment—Vendor having Contract of sale—

VENDOR AND PURCHASER—continued.

7. CONSIDERATION—continued.

53. *Part payment of consideration—Right to sue for possession.*—*Held* that non-payment of the consideration-money can be pleaded by the seller, and inquired into by the Court, the admission of the seller at the time of registration before the Registrar being no conclusive proof of payment of the consideration-money, with reference to the practice which obtains of preparing the sale-deed and registering it before payment. Under the ordinary rule of law, a purchaser has a right to sue for possession when a portion of the consideration-money has been paid, unless the contrary be shown to be the intention of the parties, and the seller has a right to sue for the balance of price. *Goor Pershad v. Nunda Singh*. 1 Agre, 160.

54. *Right to refund of earnest-money—Agreement for sale of ship—Failure of consideration.*—*Plaintiff and defendants entered into an agreement for the sale by the defendants of a certain ship, to the plaintiff of the said ship. The defendants agreed with the plaintiff that they would, immediately upon payment of the purchase-money, execute to the plaintiff and another a proper bill of sale of the ship. The defendants were unable to get a properly registered bill of sale of the ship made out owing to inability of their own title, but were willing, so far as they could, to convey. The plaintiff had made part payment in respect of the price of the ship. *Held* that the consideration had failed, and that the plaintiff was entitled to a refund of the money paid by him in part payment, and of sums disbursed by him under the agreement on account of the expenses of the ship. *Jassat Binsay v. Esav Ahmad*. 2 Ind. Jur., W. S., 13.*

55. *Valuable consideration, Question of—Assignment of those in action.*—The question whether an assignment of any equity of redemption admitted by the assignor was made for a valuable consideration or not, is no material in determining the rights of the assignee against a party who holds adversely to the assignor. *Kaond Baxari v. Kaondh Vithoba*. 10 Bom., 481.

56. *Sale of sir land with co-venant to relinquish ex-proprietary rights—Non-performance of illegal contract—Suit to recover consideration-money.*—A deed of sale which purports to convey to vendees is an illegal contract rights of the vendees in sir lands is in violation of ss. 7 and 9 of Act XII of 1881. Where, therefore, along with some zamindari land, certain sir lands were sold, and the vendors purported by their sale-deed to relinquish their ex-proprietary rights in the sir lands, but failed to put the vendees into possession of either the zamindari or the sir lands, it was held that the vendees could not recover from the vendors, as compensation, the consideration-money which they had paid in respect of the sir lands. *Burkhat Singh v. Har Prasad*. I. L. R., 19 All., 35.

57. *If a zamindar sells his zamindari rights and includes in the sale the*

VENDOR AND PURCHASER—continued.

7. CONSIDERATION—continued.

49. *Intention of parties—Failure to pay consideration, Effect of, after execution and delivery of deed.*—The intention of the parties from their acts should be ascertained; and when a deed is executed and delivered to the purchaser, a subsequent default by the purchaser in the due payment of the purchase-money would not, in the absence of fraud, make void the sale, or give any other right to the vendor than a right to sue for the money. Further, if it be proved that the vendor intended to retain possession until full payment, the Court may pass a decree establishing the purchaser's right subject to execution or payment of consideration. *Mohun Singh v. Shri Koonwar*. 1 Agre, 85.

50. *Plea of valuable consideration.—Allegation of rescin of vendor and sale of absolute title.*—A pleading setting up as a defence a purchase for valuable consideration should aver the rescin of the vendor and the sale of his absolute title for good consideration. *Radamath Das v. Bhatior*. [6 B. L. R., P. C., 530
[15 W. R., P. C., 24; 14 Moore's I. A., 1
S. C. Radamath Doss v. Gishorne & Co.

51. *Failure of consideration—Bonus paid for talukh not in existence—Right to refund of bonus.*—When a bonus is paid for a patent talukh not in existence, there is an entire failure of consideration, and the person paying the bonus is entitled to a refund of it. The principle of *caravat empur* does not apply to such a case. *Kristo Lalit Mottoo v. Nobro Coomah Roy*. [5 W. R., 232

52. *Proof of payment of consideration—Non-payment of consideration-money—Burden of proof.*—In a suit for possession of land to have been purchased under a registered deed of alleged sale, the defendant-vendor admitted the execution and registration of the deed, but denied receipt of consideration. The deed was dated in January 1876, and the suit was instituted in 1884. It was found that the vendor had been in possession during the whole of that period. The plaintiff produced no evidence in proof of the payment of consideration. *Held* that although, under ordinary circumstances, the party to a deed duly executed and registered who alleges non-payment of consideration is bound to prove his allegation, the fact that the plaintiff and his predecessors had silently submitted to the withholding of possession for upwards of eight years, combined with the continuous possession of the vendor, favoured the allegation of the latter that possession had been withheld because of the non-payment of consideration, and raised such a counter-presumption as to make it incumbent on the plaintiff to give evidence that consideration had in fact passed. *Held*, therefore, that in the absence of such evidence, and of evidence to explain the fact of the plaintiff being out of possession, the suit failed. *ACHORAMANI KVAR v. MAHABIR PRASAD* [I. L. R., 8 All., 641

VENDOR AND PURCHASER—continued.

7. COMPROMISE—concluded.

agrees to relinquish his proprietary rights in respect of the land, the vendor, in the event of such possession not being delivered or ex proprietary rights not being relinquished, is not entitled to claim a refund of the sale price or any portion thereof. *Prabhu Singh v. Har Doss, 1 T. R. 13 All.*

58. — **Deed of sale.** — *1 T. R. 23 All. 505*
59. approved. *Methman v. Len [?]*
60. *Prabhu Singh v. Har Doss, 1 T. R. 13 All.*

money had not been paid. The lower jury gave County dismissed the suit, holding that a ready was to sue for the consideration money if it was unpaid, and that he had a lien on the land for the amount, but that he could not set aside the deed. *Heid* that the deed could be set aside, and the plan of *Heid* should recover possession. *See Brown, 5 T. R. 23 All. 505.*

Contract act applied to the transaction. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
61. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
62. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

63. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
64. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

65. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
66. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

67. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

68. EVIDENCE OF FRAUD—Inde.

guaranty of purchase money. — In considering a case of alleged fraud in the purchase of an estate, it is material to inquire what relation the purchase-money paid here to the value of the estate bears. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

69. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
70. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

71. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
72. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

73. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
74. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

75. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
76. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

77. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*
78. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

79. *Prabhu Singh v. Har Doss, 1 T. R. 23 All. 505.*

VENDOR AND PURCHASER—continued.

9. INVALID SALES.

65. Fraudulent concealment—

Where a vendor, knowing that he had no right or title to property, or being cognizant of the existence of incumbrances, or of latent defects materially lowering it in value, sold it and neglected to disclose such defects to the purchaser, — *Held* that there was a fraudulent concealment vitiating the contract. *PEARRE MONY SOOR v. ABDUL SOHMAN CHOWDHURY* 7 W. R., 258

66. Misrepresentation—Right

to recover purchase-money.—Willful misrepresentation by a vendor regarding property sold, practised in a matter within his knowledge, and concealing which the purchaser had no adequate means of knowing, held to vitiate a sale, and to entitle the purchaser to recover the purchase money actually paid by him. *MAHOMED SHARIF KHAN v. BAHOO BEGUM* [1 N. W., Part II, p. 26; Ed. 1873, 84

67. False representation

against vendor by purchaser.—*Inducement, not proved*—Shareholder buying shares from a Director of the Company.—To maintain a suit for damages upon a false representation alleged by purchaser against vendor, it must be established that the plaintiff was induced by the misrepresentation to enter into the contract. Shares in a banking company which shortly afterwards went into liquidation were sold by a Director to the plaintiff, a shareholder. The latter now sued the vendor, alleging inducement to buy the shares by the vendors' false representations as to the state of the Banks' affairs. Both the Courts below concurred in finding that oral representations as to the latter alleged to have been made by the defendant to the plaintiff were not proved. Those Courts, however, had concurred in finding that the defendant, though he was not responsible for false balance-sheets issued before 1890, was well aware of the falseness of the one issued for the half-year ending on the 30th June 1890. The Judicial Committee saw no reason for interfering with these concurrent findings. The plaintiff, in this appeal, relied on the issue of the false balance-sheet of 1890, the issue of a false report by the Directors, and a wrongful payment of dividend for the period above mentioned, acts in which the defendant had taken part; these acts, as a series, constituting false representations, the bank having in fact been insolvent at the time. But it was not shown by the evidence that the plaintiff had been induced to buy the shares, which he had contracted to buy in two sets, one in September, the other later on in 1890, by any of the representations so made; regarded being had to the dates respectively and to his own knowledge. The dismissal of the suit was therefore maintained. *MACAULAY v. WILSON* [1 L. R., 21 All., 209 L. R., 28 L. A., 6

68. Undue influence—Fiduciary relationship—Attorney and client—Onus probandi—A contract of sale or conveyance entered into by any one with a person who stands relatively to him

VENDOR AND PURCHASER—continued.

9. INVALID SALES—continued.

in a position of confidence or trust is liable to be called in question by the vendor, and to be set aside at his instance, if it be found that the other party made an unfair use of his advantages. This rule of equity applies strongly in a case where any person acting as an attorney, or as a legal adviser, enters into a contract with his client in respect of the subject of litigation or advice. Undue influence is presumed to have been exerted until the contrary is proved, and the purchaser is bound to show that all the terms and conditions of the contract are fair, adequate, and reasonable. *PUSKONG v. MUNIA HATWANT* 1 B. L. R., A. C. 95; 10 W. R., 128

69. Fiduciary relationship—Trustees and cestui que trust—J and M

Mookenjee v. Mutyoti Mookenjee. SREEMANOHUNDRA v. MUTTY LOTI MOOKENJEE. SREEMANOHUNDRA under a decree. DHONKANDRO CHANDER MOOKENJEE v. MUTTY LOTI MOOKENJEE. SREEMANOHUNDRA Mookenjee v. Mutyoti Mookenjee. Cor., 57 person on fiduciary position—Agent or other person on fiduciary position—Consideration—An agent or person in a fiduciary position towards the owner of property purchased by him is bound to prove that the sale was made for good and sufficient consideration, and must not only prove that the agent had authority to sell, and that the consideration alleged was in fact paid, but also that the purchase was a fair price for the property. If the purchase be made by a stranger, such a purchaser need not show that the consideration paid by him is a consideration equal to the value of the property; it will be sufficient for the purchaser to show that the sale was made by a person who had authority from the owner to sell; and, unless the seller can establish a fraudulent connivance between the agent employed to sell and the purchaser, the sale will be binding on the seller on proof of authority of the agent to sell. *BUTTA BEBER v. DOMMER LAY* 2 N. W., 153

70. Purchase by agent or other

man of weak intellect—Ground for setting aside sale by Deed of sale executed by

VENDOR AND PURCHASER—continued.

9 INVALID SALE—continued.

the transaction HAZELDA CHURCH V. BAKER DENIA . W. H., 1864, 65

72 —Sale by old and illiterate woman without professional advice.—*Read*

—*Undue influence—Inadequate consideration—*

Terms on which deed will be set aside.—*Forfeiture*

money declared a charge.—*Funeral expenses of*

widow declared a charge.—*No allowance for*

repairs and improvements.—*C was the widow of*

her husband and from the death of H until her

own death remained in occupancy of a house and

of C's and shortly after K's death, D and her son H,

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was to be set aside, the sums so expended as could be

repaid to them. *Held* that no allowance could be

made to D and H for sums so expended by them such

sums having been expended at a time when D and H

must be taken to have known that they were expend-

ing in possession of the property in question.

71 —*YADONIAH BARNES V. BAKER DENIA*

[I. L. R., 5 Bom., 450]

73 —*Indequity of consideration—Contract*

of sale—*Sales by expectant heirs of reversionary*

interest.—*In the case of a sale by a person, no*

interest and in dissipated circumstances but not with

out notice or waiver of information of an estate ac-

quired by the party seeking to set aside the sale must

establish the fraud actual or constructive which

entitles him to relief. It is no sufficient for him

to show that he did not receive the full value of the

estate to which the receipt of the interest on might

entitle him to relief. The difference between the value

of the estate and the value of the interest on might

represent the difference between the value of the

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VENDOR AND PURCHASER—continued.

78. Deed of sale set aside as being fraudulent and void—Right of purchaser to compensation for improvements.—A party in possession under a deed of sale conveying real estate, the property of a defendant in a pending suit, held not entitled to any allowance for sums expended by him for improvement upon the estate, when the deed was found to be fraudulent and void as against the creditors of the vendor, and to have been executed to defeat a sequestration. *Musard v. MAHOMED GAZVY SHARAF v. ALY MAHOMED MOORE'S I. A., 27*

79. Purchaser with notice of prior contract to sell—Trust Act (II of 1882), s. 91—Specific Relief Act (I of 1877), s. 27.—In a suit for land it appeared that the plaintiff had obtained a registered sale-deed, comprising the property in question, from defendants Nos. 1 and 2 who had already (to the plaintiff's knowledge) contracted to sell it to another, and that the plaintiff had paid no consideration for the sale-deed, which in fact represented a collusive transaction entered into to defeat the prior contract. *Held* that the plaintiff was not entitled to recover. *NARAYAN PITAL v. KETAYAN PITAL I. L. R., 18 Mad., 43*

80. Execution of sale-deed without consideration—Subsequent transfer for value—Transfer of Property Act (IV of 1882), s. 54.—In a suit for land, it appeared that in 1887 *A* had executed in favour of *B* a registered conveyance of the land in question, which purported to be a sale-deed, but that *A*, who had retained possession, sold and delivered the land to *C* and *D*, and that they then discharged a mortgage which was to have been paid off by *B*. In the interval between the two transactions above referred to, the plaintiff had purchased the land from *B*, and he now alleged that the persons in possession had executed a rent agreement, in fact found to be a forgery, under the terms of which he claimed to eject them. *Held* that the plaintiff's claim, founded on the transaction of 1887, did not prevail against *C* and *D*. *SARVATYAR v. CHANAH-SAMU MUDATIA I. L. R., 18 Mad., 61*

81. Colourable sale—Sale of property to defraud creditors—Indicia of fraud.—Where in a suit to establish plaintiff's right to property purchased by him it was found that his vendor, who had many debts to pay, had sold to the plaintiff all his property, reserving nothing to himself; that the plaintiff bought the property without seeing it or valuing it; that the consideration for the sale consisted of time-barred debts or debts which were not payable at the time; that the property sold remained in the possession of the vendor, who paid its assessment; and that the consideration was grossly inadequate; *Held* that there was no bond fide or valid sale, but a mere colourable transaction without consideration not intended to transfer the property to the plaintiff. *NANA MANSARAY SHET v. RAJUMAT JAVAHAR SHET I. L. R., 22 Bom., 255*

VENDOR AND PURCHASER—continued.

9. INVALID SALES—continued.

attached property belonged to *D* and was liable in execution. *Held* that, inasmuch as neither the decree of the 30th April 1872, nor the plaint on which it was founded, established or sought to establish any claim against a specific lien upon the immovable property, the subject of the present suit, it was perfectly competent for *D*, at any time previously to an attachment of the property, to alienate it, and the question for decision as to that property was whether *D* had alienated it or not. If the deed of sale by which *D* conveyed the property on the 21st August 1871 were merely colourable, and the change of ownership assessable only and not real, *i.e.*, if it was the intention of the parties that the alienance should be merely a trustee for *D* to shield the property from execution, and that *D* should continue to be the beneficial owner of it, there would not be any alienation, and the deed of sale would be void as against an attaching creditor of *D*. If, on the other hand, the sale were a real transaction, *i.e.*, if it was the intention of the parties that the full ownership should pass from the vendor to the vendee, then the sale would be valid, even though it might have been in the contemplation of the parties that future attempts to attach the property by a creditor of the vendor (not having any specific lien on the property) should be defeated by the sale. (Until attachment the creditor has no right to interfere with the power of his debtor to deal with his property. *KARAR HANAI v. ARDESHIR HONORABLE MAHARAJA v. DAWD YAHAD JAVAHAR I. L. R., 4 Bom., 70*

76. Sale to two successive purchasers—Non-payment of purchase-money—Right of first and second purchasers.—The proprietor of certain immovable property conveyed it first to one person and then to another. The first purchaser sued the vendor and the second purchaser for the possession of the property, alleging that he had been put in possession of it, but had been ousted by the second purchaser. *Held* that the first sale was not void by reason of the non-payment of the purchase-money, and that the second sale being invalid as having been made by a person who had no rights and interests remaining in the property, the second purchaser was not a representative of the vendor and still due to him from the first purchaser, and to be entitled to receive the purchase-money found to be due from him from the property until the receipt of that purchase-money. *RAM LAKHAN KAI v. BAKDAN KAI I. L. R., 2 All., 711*

77. Sale of property not belonging to vendor—Loss sustained by purchaser on being dispossessed.—Where a party sells property to others, and it afterwards appears that he had not the right to do so, and the purchasers are in consequence dispossessed, the loss ought to fall on the vendor, and not on the vendees who put faith in his act of selling. *AMANOULLAH v. MAHOMED NASIB [22 W. R., 442*

VENDOR AND PURCHASER—continued.

10 LBS.

89. — Creation of Non-File-

The court found that the contract was not operative as it was transferred by H to C. The transfer of the land was effected by the creation of a trust for the benefit of the transferee.

It was shown to forbid the giving of such a right to a person. The grant of property subject to a human right is in general a way to another right, but it is not a way to make one a case against one who is already free to make his own.

the law in this case was not capable of a prior charge. A purchaser, if he had to the appropriate title in the collector's books, or in a copy and the province of the Court of justice to give effect to the title of each purchaser, to the extent of defeating a prior lien or mortgage, and will not notice of the charge, would have an equally effective title. — 17th, 18th, 19th, 20th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 33rd, 34th, 35th, 36th, 37th, 38th, 39th, 40th, 41st, 42nd, 43rd, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 51st, 52nd, 53rd, 54th, 55th, 56th, 57th, 58th, 59th, 60th, 61st, 62nd, 63rd, 64th, 65th, 66th, 67th, 68th, 69th, 70th, 71st, 72nd, 73rd, 74th, 75th, 76th, 77th, 78th, 79th, 80th, 81st, 82nd, 83rd, 84th, 85th, 86th, 87th, 88th, 89th, 90th, 91st, 92nd, 93rd, 94th, 95th, 96th, 97th, 98th, 99th, 100th, 101st, 102nd, 103rd, 104th, 105th, 106th, 107th, 108th, 109th, 110th, 111th, 112th, 113th, 114th, 115th, 116th, 117th, 118th, 119th, 120th, 121st, 122nd, 123rd, 124th, 125th, 126th, 127th, 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699th,

Marsh, 481; O Moore, I A, 303

unpublished produce of land in the occupation of a cultivator, with notice of the land granted on such produce by a Co of Act XVIII of 1853, takes such subjects to such him. N. A. No. 1393 of 1870 decided on the 14th February 1871, and *King's College v. Bishop*, 2 *Agar*, 213, followed. *Kipkor v. Kipkor*, 3 *AN*, 433.

85. 1850 C case II—Subsequent purchases by another. In 1850 C case II a lien on the property by a deposit of title-deeds. In 1957 B purchased the same property 6 and 6d and without notice of H's lien. Bresser then v. Hixson 140.

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01731-1317 01

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VENDOR AND PURCHASER—continued

NO LINE—COPYING.

the purchase on different terms. The tendered,

[illegible]

under a 250, but without success. In a suit by the purchaser to cancel his absolute right—*Hild* that, as the defendant, plaintiff has suppressed the facts of the change, and thereby induced the purchase as the relative interest of the plaintiff. Defendant's motion for judgment was granted, the case was reversed and remanded.

Barrett 3 H. L. R. A. O. 407; 12 W. R. H. 303

87.
Right to enforce lien - sale
subject to decree declaring lien on property
A decree declares a lien over certain sum in favour of M. and next property of M. All part of this property to be taken by him again as it was purchased from one to enforce his lien against him. It is held that M. has no right to sue for recovery of the property.

88. _____ Then on land created by agreement - sale to stranger with no notice - from
 89. _____ Dignity of - Dignity of land to D to
 90. _____ mean refusal of a farm, and requested that in a

69. Necessity of notice of title—
 70. Notice of title—
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T H U R S D A Y

VENDOR AND PURCHASER—continued.

11. NOTICE—continued.

and the plaintiff was entitled to recover. *TRABANDRA PUTLI v. HARI RAYA PUTLI*

[3 Mad., 38]

See contra, CHIDAMBALA MATAYAR v. ANNAPPA NAKKALAY

1 Mad., 62

98.—*Bond fide purchaser—Omission to make proper inquiries into title.*—In order that a purchaser of immovable property from a Hindu in the Island of Bombay may be entitled, as against the beneficial owner of such property, to set up the defence of being a *bond fide* purchaser without notice, he must show that he has made all proper inquiries into the title and as to the state of the family of his vendor, and of his vendor's predecessors in title for a period of twelve years at least before the date of his purchase. *SATYATAT KASABADAS v. OPA NIZAMUDIN* 8 Bom., O. C., 77

97.—*Notice of possession of the rents of property is notice of the far affected with notice of lessor's title.*—Notice of possession of the rents of property is notice of the far affected with notice of lessor's title. *Purchaser how*

96.—*Joint Hindu family, Purchase from.*—When a person has notice that another has or claims an interest in property for which he is dealing, he is bound to inquire what that interest is; and if he purchases without doing so, he will be bound, although the notice was inaccurate as to the particulars or extent of such interest where the notice is given by the person himself who claims an interest in the property, and it is afterwards proved that he had such an interest. *Quere*—Whether any amount of inquiry can discharge the purchaser from liability. A purchaser, therefore, from one member of a joint Hindu family is affected with notice of the claims of the other members. On the facts, *Held* (reversing the decision of the Court below) that no sufficient inquiry had been made in this case. *GOVIND CHANDER MOOKERJEE v. DOORAPPAHARAD BAYCO* 14 B. L. R., 337; 22 W. R., 248

99.—*Incumbrance—Fraud—Equitable mortgage—Purchaser for valuable consideration without notice.*—The reason for the rule of equity that a purchaser, yet with notice of a prior incumbrance, purchases subject to such incumbrance, is that such purchaser is acting *in bona fide* in taking away the right of the prior incumbrancer by getting the legal estate, while knowing that a prior purchaser has the right to it. But a purchaser for valuable consideration, without notice of the prior right of a third person, is not guilty of or party to a fraud upon the rights of a prior purchaser. The Courts of equity therefore will not interfere with his right to the possession, enjoyment, and disposal of the property; and although subsequently to his purchase he may become aware of the prior incumbrance, yet he has the right

90.—Purchaser without notice

Secret ownership—Fraud.—A vendor who purchases for valuable consideration, and without notice of a beneficial owner of the property

held by him under an apparently good title will be protected from subsequent acts of the owner or his heirs, both of whom were parties to the fraud; and his purchase will hold good against any subsequent sale made by them. *HEXIE v. GREGG*

3 W. R., 10

91.—*Equitable relief*

against forfeiture.—Remarks on the doctrine of equity as to the applicability of the defence of purchase for value to the consideration without notice. The defence does not apply where the Court of Chancery is exercising a jurisdiction concurrent with that of the Courts of the law. Where A sold land to B, reserving a right to repurchase by payment of a certain sum at a specified time, and before such time had arrived B re-sold to C for valuable consideration without notice, and A failed to make the payment and forfeited his right to repurchase. *Held* that he had no title unless relieved against the forfeiture, and that such relief could not be given as against C. *SAMAKKAVUDAY v. PANTHAKI CHETTI*

[3 Mad., 14]

92.—*Assignment of legal estate—Notice to holder of legal estate.*—In order to complete assignment of an equitable estate in immovable property, it is not necessary by English law that notice of the assignment should be given to the owner of the legal estate. Nor is there any rule of Hindu law which requires notice to be given to the person in possession whose position may be considered analogous to the holder of the legal estate in English law. *GOVINDARAT v. RAYI*

I. L. R., 12 Bom., 33

93.—*Purchase from joint Hindu family—Presumption—Sensible.*—That the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. *KOTIOTTETTERATHIN MAKKI KOBAYAR v. P. THEN PUPAZHI MAKKI CHAZHA NAYAR*

[3 Mad., 294]

94.—*Bond fide purchaser—Fraud in vendors.*—A *bond fide* purchaser should not be deprived of the benefit of an honest purchase, even though the sale to his vendors was fraudulent if he had no notice of the fraud. *GOVINDABAI v. DIGTAR SINGH*

W. R., 1864, 225

95.—*Sale of whole interest—Subsequent purchase without notice by another.*—The plaintiff purchased from the first defendant who purchased from the person admitted to be the owner in 1856. The resisting defendants claimed under a subsequent sale by the same person. *Held*, reversing the decree of the lower Court, that on the simple principle that after the conveyance to the first defendant the owner of the land had nothing more to convey, the resisting defendants took nothing

VENDOR AND PURCHASER—continued.

11. NOTICE—continued.

The third defendant claimed part of the land under the proviso sale to him in 1858, &c. the first defendant. The conveyance to him being also duly inrolled.

VENDOR AND PURCHASER—continued.

11. NOTICE—continued.

to convey to a subsequent purchaser, who, at the time of such subsequent conveyance, has notice of the prior right of the third party, and such subsequent purchaser will take the property free from the in-

100.

second mortgage—continued.

of existing incumbrance—continued.

of existing incumbrance—continued.

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VENDOR AND PURCHASER—continued.

11. NOTICE—continued.

GOODHIA RAY KHAN. MUNSOOR ARI KHAN v. 8 W. R., 399

Liability of

land purchased from Hindu devisee for debts of his

testator—Onus probandi.—Per JONATHAN, J.—The

question how far lands purchased from a Hindu

devisee are liable in the hands of the purchaser for

debts of the testator stands on the same footing as a

similar question would under the present English

law. The creditors of the ancestor or testator may

follow his lands into the possession of a purchaser

from the heir or devisee, if it can be proved that

such purchaser knew (1) that there were debts of the

ancestor or testator left unsatisfied, and (2) also that

the heir or devisee to whom he paid his purchase-

money intended to apply it otherwise than in the

payment of such debts. But a purchaser ignorant on

either of these points has a safe title, for no duty

is cast upon the purchaser from the heir or devisee to

inquire whether there are any debts of the ancestor or

testator, even when there is an express charge of debts

by the testator on the devised estate—at least when

the devisee is also executor, and in such a case the

burden of proof is entirely on the creditor to show

that the purchaser from the devisee had notice that

the latter intended to misapply the purchase-money.

For a purchaser to be affected with constructive

notice through his solicitor, the latter himself must

have actual notice. GABRIEL CHANDER GHOSH v.

MAJINTOSH 111.

[T. L. R., 4 Cal., 897; 4 C. L. R., 193

Specific Relief

Act (I of 1877), s. 27—Specific performance of a

contract, Suit for—Whether registration of an

ekarnamah was sufficient notice of the contract.—

More registration of an ekarnamah is not sufficient

VENDOR AND PURCHASER—continued.

11. NOTICE—continued.

to do this, he was bound by the rights of the tenants

as much as if they had been specially mentioned

in the conveyance to him. Manchaji Sorabji v.

Kongsoo, 6 Bom. L. C. Rep., 59, followed. Held

also that, as there had been no denial of plaintiff's

rights until shortly before the suit, it was not

barred by limitation. AMRABHOJ HARMANOV v.

BALKRISHNA MEWAD . I. L. R., 19 Bom., 391

106.

Notice—Right of

of purchaser.—B, having been sentenced to trans-

portation for life, presented a petition in the Revenue

Court, in which, stating that he owned a certain

zamindari estate, and that he had been so sentenced,

and that it was necessary to make arrangements for

the payment of the Government revenue and the man-

agement of the estate, he prayed that his name might

be removed from the revenue register and that of P

recorded in its stead. P sold the property for con-

sideration, his vendee purchasing without notice of

any trust, and it was subsequently put up for sale in

execution of a decree against P's vendee, and was

purchased without notice of any trust. Held that

of the purchaser at the execution-sale. Durga Pra-

sad v. Asa Ram, I. L. R., 2 All., 361, observed on.

Haji Ram v. Durga Prasad

[T. L. R., 5 All., 803

108.

Constructive notice—Per-

son in possession of subject of sale.—Where there is

a person in possession of an estate other than the

nominal owner, i.e., the person in whose name the

title-deed is, a purchaser, although he may be a

purchaser for value, is bound to inquire what is the

nature of his possession. If he does not think fit to

do so, he takes subject to the rights of the person in

VENDOR AND PURCHASER—continued.

11. NOTICE—continued.

to do this, he was bound by the rights of the tenants

as much as if they had been specially mentioned

in the conveyance to him. Manchaji Sorabji v.

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Haji Ram v. Durga Prasad

[T. L. R., 5 All., 803

108.

Constructive notice—Per-

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VENDOR AND PURCHASER—continued.

11. NOTICE—continued.

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BALKRISHNA MEWAD . I. L. R., 19 Bom., 391

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VENDOR AND PURCHASER—continued.

12. POSSESSION—continued.

sary to complete a sale of corporate property, in order to prevent successive purchasers from being cheated by successive sales of the same property, and to obviate disputes as to what was really sold. A purchaser from a Hindu vendor, who buys corporate property without possession, does not thus obtain a title which in a suit for specific performance against the vendor, he can enforce against a person actually in possession under a title adverse to the vendor by joining that person as a defendant. KACHHA VITHORA v. KACHHA VITHORA. 10 Bom., 481.

121. Necessity of change of possession—Hindu and Mohammedan laws—Priority.—It is a general but not an invariable rule that possession in the grantee or assignee is deemed essential amongst Hindus and Mohammedans to the complete transfer of immovable property, either by gift, sale, or mortgage. Exceptions to the above rule pointed out. LAKSHMAN DAS SARTOCHAND v. DAYARAT. I. L. R., 6 Bom., 168.

122. Delivery of possession—Notice.—Delivery of possession of property sold is, under the Hindu law, essential to complete the title of the vendee against a third party purchasing with possession from the same vendor without notice of the prior transaction. The rule prevails as between competing conveyances both of which have been registered. Authorities and Hindu law texts on the subject reviewed. LATU-BHAI SUBCHAND v. BAI ANHAT. I. L. R., 2 Bom., 289.

123. Sale when vendor is not in possession—Hindu law—Necessity of possession—Kachment.—A Hindu, whose estate is in the possession of a trespasser or a mortgagee, may sell his right of entry as such, or his equity of redemption as such, and the purchaser may thereupon sue to effect of sale by a Hindu vendor purporting to convey the estate itself, executed by a person who is not in possession, cannot operate as a present conveyance, nor enable the purchaser to sue in ejectment. *Pravald Sen v. Budhu Singh*, 2 B. L. R., P. C., 11, and *Rhobosoonduree Dassah v. Issur Chander Dutt*, 11 B. L. R., 36, followed. *Bikan Singh v. Parbatty Koor*, 23 W. R., 99; *Gungahurry Nundee v. Raghubram Nundee*, 14 B. L. R., 307; and *Lokenath Ghose v. Jugobundhoo Roy*, I. L. R., 1 Cal., 297, referred to. *Bai Surab v. Dattaram Daya-SHANKAR*. I. L. R., 6 Bom., 380.

124. Possession, Delivery of—Hindu law—Sale.—Possession is not essentially necessary by Hindu law to give validity to a transfer by sale of immovable property. *Bhuvan BHAI BAVA v. BHAIJI PHAG*. I Bom., 19.

125. Title—Hindu law.—Delivery of possession is not necessary to the transfer of ownership among Hindus. *Per MAHARAJ*.—As a general rule of law, when a vendee has got

VENDOR AND PURCHASER—continued.

11. NOTICE—concluded.

unregistered san-mortgage—Plea of purchase without notice.—The general rule in the Presidency of Bombay is that amongst Hindus possession is necessary in order to perfect a transfer of immovable property by mortgage or deed of sale as against subsequent incumbrancers or purchasers. The main ground of this rule is that possession is notice to all subsequent intending mortgagees or purchasers of the title of the party in possession. It is, however, the established and judicially recognized custom of Gujarat that possession is not necessary in the case of a san-mortgage to validate it as against subsequent mortgagees or purchasers. The necessity of possession being thus dispensed with, it seems to follow that a san-mortgage, in other respects good, is valid as against a subsequent mortgage or purchaser, whether or not such mortgage or purchaser has notice of the san-mortgage. To hold that a subsequent mortgagee or purchaser for valuable consideration and without notice of a san-mortgage is entitled to priority over it would be tantamount to depriving the san-mortgagee of the benefit of the custom that possession is unnecessary. *Per ALFRED, J.*—Such perfect security is now afforded by registration that there appears to be hardly room for the plea of purchase without notice. Seeing that a purchaser may secure himself against all unregistered mortgages without possession by simply taking possession or registering his conveyance, he is, if he omit to do so, in *parti delicto* with the prior mortgage, and it is difficult to see how he is entitled to any relief. *SUBHAGCHAND GULABCHAND v. BHAI-CHAND*. I. L. R., 6 Bom., 193.

12. POSSESSION.

118. Vendor remaining in possession—Presumption.—Where a deed was executed conveying a man's entire property to his son, only two years old and reserving to himself one rupee a day for his subsistence, and after execution the conveying party remained in possession.—*Held* that, in the absence of explanation, no other inference could be drawn than that the deed was merely intended to be used as a blind. *SURENATH SINGH CHOWDHURY v. HUREERZA*. 10 W. R., 449.

119. Condition of security by vendor—Suit to realize security.—The defendant purchased certain jewels at a sale by auction subject to a condition that, if not paid for in three days, the goods should be sold at the risk of the purchaser. Being unable to pay within the time stipulated, he gave a promissory note for the price, upon an agreement that the vendor should retain the jewels for him, but should not exercise the power of sale within three days. *Held* that the vendor could sue on the note, though he retained the jewels in his possession under the lien so created. *ALLEN, HAYES & Co. v. ANANDO CHANDER MUNDRA*. BOURKE, O. C., 156.

120. Absence of change of possession—Hindu law—Incomplete sale.—According to Hindu law, a change of possession is neces-

13. PURCHASE OF MORTGAGED PROPERTY

—continued.

Redeeming.—A member of a joint Hindu family granted a usufructuary mortgage; he subsequently, without the knowledge of the co-partners, released the equity of redemption. On hearing of this, the co-partners contested the validity of the release. *Held* that the parties claiming from the person to whom the release was made, took, so far as the co-partners were concerned, a title only as mortgagees. *RADHANATH DAS v. KILTOOT* 6 B. L. R., 530

S. C. RADHANATH DAS v. GIBBONS & CO.

[15 W. R., P. C., 24 : 14 Moore's I. A., 1

137. Purchase by mortgagee—

Possession—Priority—Registration.—A registered mortgage without possession has priority over a subsequent registered sale and conveyance with possession. By a duly registered deed, D mortgaged land to the plaintiff with power of sale. On default made by D, the plaintiff brought a suit for a sale of the mortgaged land; but pending the suit, D sold the land to the defendant, who registered his conveyance and entered into possession. The plaintiff subsequently obtained a decree, and at the execution-sale became himself the purchaser. In the present suit he sought to recover possession from the defendant. *Held* that the plaintiff was entitled to recover. His rights as mortgagee included the right of bringing to sale the property as it subsisted at the date of the mortgage. The property having been so brought to sale, the purchaser acquired a right free from any created subsequently to the mortgage and subject to it. *SHRINGARPUR v. PETH*

[I. L. R., 2 Bom., 662

138. Rights of mortgagee—Mort-

gage sale without disclosing—Estoppel.—The three senior members of an undivided Hindu family—the remaining members of which had disappeared—settling forth on ground of necessity, executed to the plaintiff, in November 1870, a mortgage, duly registered, of a piece of land which formed part of the family estate. Certain judgment-creditors of the absent member subsequently attached and sold his share in the said land under their decree. The plaintiff's undivided son purchased it, and in 1872 resold his right, title, and interest in it to defendants father, without disclosing the fact of his father's mortgage, but without any active fraud on the part of himself or his father to suppress the fact from the knowledge of his purchaser. In 1874 the plaintiff obtained a decree upon his mortgage, and attached the land. In a suit by the plaintiff to establish his right as against all the land included in his mortgage, *Held* that the mortgage being, under the circumstances, a valid one, the sale of the absent son's share was subject to the lien created thereby, which lien was not disturbed by the purchase and subsequent sale of the son's title was stated in the deed of sale of the new purchaser, who, by the fact of its being a sale of a share, was put upon inquiry. The mere want of disclosure by the plaintiff's undivided son of his father's mortgage, was not enough to create an

139. Sale of equity

of redemption—Right of purchaser—Parties.—By two deeds dated respectively the 2nd and February 1868 and 7th September 1872, and duly registered, A mortgaged the lands in dispute to B for a term of years which expired in 1880. On 10th October 1873, A executed a raziinama in favour of B, relinquishing all his right in the said lands, and B next day executed a kabuliata to Government for the lands, which thereforward were entered in B's name. Previously to the second mortgage and raziinama to B, viz., on 21st March 1870—A had, by a duly-registered deed, mortgaged the same lands to the plaintiff, who in 1874 brought a suit against A upon his mortgage and obtained a decree, under which he sold the mortgaged property, and became himself the purchaser thereof. Before and at the time of the institution of this suit, B was in possession of the mortgaged land, but was not made a party to the suit. In 1877 B sold the land to C by a duly registered deed. In a suit brought by the plaintiff against B and C to recover possession of the land so purchased by him as above mentioned, at the sale in execution of his own decree, *Held* that B's possession at the date of the plaintiff's suit upon his mortgage was sufficient to put the plaintiff on inquiry, and to constitute legal notice to him that the equity of redemption was at that time vested in B, and it was therefore the plaintiff's duty to have made B a party to the suit brought by him against A, who had then alienated the equity of redemption to B, and not having done so, the plaintiff could not rely, in support of his own title, upon a purchase under his own irregularly-obtained decree, and could not therefore stand in a better position as against B than if his original suit had been properly constituted, viz., he was bound to give B an opportunity of redeeming his mortgage. *NARAYAN v. GUTASING* [I. L. R., 4 Bom., 83

140. Right to redeem—Good title at time of

hearing of suit—Certificate of sale.—The property in dispute was mortgaged by its owner to the defendant with possession on the 3rd October 1847. On the 3rd December 1841 A obtained a money-decree against the son and heirs of the mortgagor. In execution of that decree, the property was sold subject to the mortgage, and purchased by B on the 12th August 1864. Before completion of the sale, B, on the 1st September 1864, sold it to C, who, on the 30th March 1877, conveyed it by deed to the plaintiff. On the 27th September 1877 the plaintiff brought a suit for redeeming the property, and at the hearing produced a certificate of sale, dated the 27th October 1877. The certificate was applied for in May 1877, and issued to C, reciting the sale to B, and the sale by B to C. The Court of first instance allowed the plaintiff to redeem on payment of a certain sum of money to the defendant. The Assistant Judge, on appeal, reversed the decree of the first Court on the

—continued.

13. PURCHASE OF MORTGAGED PROPERTY

—continued.

estoppel against his father seeking to establish his claim under the mortgage. *JOSHI v. JOSHI*

[I. L. R., 2 Bom., 650

VENDOR AND PURCHASER—continued.

13 PURCHASE OF MORTGAGED PROPERTY

found that the certificate of sale was not in existence at the date of the institution of the suit, and that therefore the plaintiff had then no complete title. On appeal to the High Court.—Held that the plaintiff, having purchased and paid for the equity of redemption, was entitled to redeem, although the certificate of sale was not issued until after the suit had commenced.—*continued*

141. —Purchaser of mortgage interest.—Priority.—Purchaser of estate without notice of a prior mortgage.—Suit by mortgagee against purchaser to establish right to attach proceeds.

On the 27th July 1863 D and T sold the house to the defendant. The deed of sale was not registered. A part of the purchase money was applied to the payment of the first mortgage, which was then delivered up to the defendant, with a receipt on it by T, who acknowledged to have received from the plaintiff attached the house in execution of his decree. The defendant was not made a party to that suit. The mortgagee obtained a decree for the recovery of the mortgage debt out of the mortgaged property. The mortgagee then applied for an order that the house should be sold, and that the proceeds should be paid to him. The order was made, but the mortgagee did not attend at the sale. The plaintiff then applied for an order that the house should be sold, and that the proceeds should be paid to him. The order was made, and the house was sold. The proceeds were paid to the plaintiff. The mortgagee then applied for an order that the house should be sold, and that the proceeds should be paid to him. The order was made, and the house was sold. The proceeds were paid to the mortgagee.

142. —Assignment of the equity of redemption by the mortgagee.—No notice to mortgagee of the assignment.—A change of name in Collector's books.—Further advances by mortgagee to original mortgagor on same security.—Suit by assignee of equity of redemption to redeem.—Finding of assignee to pay off the further advances to mortgagor.—Holding by—allowing original mortgagor's name to remain in Collector's books.—*continued*

VENDOR AND PURCHASER—continued.

13 PURCHASE OF MORTGAGED PROPERTY

the house from the plaintiff's mortgage. Subsequently, the plaintiff's mortgage was assigned to the defendant. The defendant then applied for an order that the house should be sold, and that the proceeds should be paid to him. The order was made, and the house was sold. The proceeds were paid to the defendant. The plaintiff then applied for an order that the house should be sold, and that the proceeds should be paid to him. The order was made, and the house was sold. The proceeds were paid to the plaintiff.

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144. —Assignment of the equity of redemption by the mortgagee.—No notice to mortgagee of the assignment.—A change of name in Collector's books.—Further advances by mortgagee to original mortgagor on same security.—Suit by assignee of equity of redemption to redeem.—Finding of assignee to pay off the further advances to mortgagor.—Holding by—allowing original mortgagor's name to remain in Collector's books.—*continued*

VENDOR AND PURCHASER—continued.
14 PURCHASE MONEY AND OTHER PAY-
MENTS BY PURCHASER—continued.

refund of the purchase money. The purchaser who

the vendor could only claim such amount by a separate action. **Court of Wards & Limitation**
13 B. L. R., 40, 41 W. R., 207
See **Good v. Hargreaves & Co.**
16 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

Purchaser at
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

from his bargain and to recover the purchase-money merely because the contingency contemplated actually happened, and the property either does not become, or cease to be, available for his benefit. **REMARKS**
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

to interest claim in part of purchase money left unpaid by arrangement—Tender—By an agreement between vendor and purchaser part of the purchase-

or to tender to the vendor the money retained. **REMARKS**
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

Deposit by purchaser under contract—Contract giving effect to deposit of purchase-money—Tender right to retain deposit—Held that where a contract for sale goes off by default of the purchaser the purchaser cannot recover any deposit which may have been paid by him to the vendor in pursuance of the contract. **REMARKS**
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

Right of purchaser to return of deposit—In case of purchaser for the part of the purchase money paid by him—

VENDOR AND PURCHASER—continued.
14 PURCHASE MONEY AND OTHER PAY-
MENTS BY PURCHASER—continued.

purchaser of land who has paid part of the purchase money by way of deposit, but who afterwards unjustifiably repudiates the contract of purchase, or is guilty of any default by way of which the sale is not carried out, is not entitled to recover the deposit from the vendor. The vendor is not obliged to return the deposit to the purchaser merely because under the circumstances the Court refuses to grant specific performance against him from the moment part of the purchase-money is paid, the purchaser has a lien upon the property to that extent, which he can only be lost to him by reason of his failing to carry out his part of the contract. **REMARKS**
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

Purchaser at
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

denial of contract by defendant—Dismissal of suit by purchaser for specific performance for non pay- ment of the balance of the consideration money within the stipulated period—Right of plaintiff to return of deposit of the part of the consideration money paid where specific performance is refused—Equity and good conscience—Bengal, A. W. P., and District Court Act (XII of 1877), s. 37.
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

to pay the balance of the consideration money on the stipulated day, but made a decree for the refund of the deposit. On appeal by the defendant to the High Court, it was held that, inasmuch as the defendant was not repudiated of the contract by the plaintiff, he (the plaintiff) was entitled to a refund of the deposit made by him. **REMARKS**
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

Contract to purchase property in contemplation of death—In such property—Contract making no mention of Government rights—Knowledge of purchaser—Held that the contract was valid and enforceable. **REMARKS**
13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207
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13 B. L. R., 40, 41 W. R., 207
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13 B. L. R., 40, 41 W. R., 207
13 B. L. R., 40, 41 W. R., 207

VENDOR AND PURCHASER—continued.

15. PURCHASERS, RIGHTS OF—continued.
Right to execute decree.—A decree-holder purported to sell to A, by private sale, all his right, title, and interest in a mortgage-deed obtained by him in a mortgage-deed against the mortgagor. The deed of sale was not registered. Afterwards, by a registered deed of sale, A conveyed all his right, title, and interest in the same decree to B. Held that the right to execute the decree as a mortgage-dee did not pass to B. KOOR LAT CHOWDHRY v. NITTAY NUND SINGH. 1 I. L. R., 9 Cal., 839

S. C. HUB LAT CHOWDHRY v. NITTAY NUND SINGH [12 C. L. R., 393]

175. — Assignment of indigo factory—Right to rent and to indigo manufactured.—Where a plaintiff sued on the alleged purchase by him of the rights and interests of certain parties in an indigo concern, it was held that the rents collected and appropriated, and the indigo manufactured and taken away before the date of the purchase, could not form part of the stores and assets sold to the plaintiff, unless the sale of the assets, etc., had been as from some date prior to the date of purchase. CHANDRA COOMAR ROY v. WILKINS [10 W. R., 311]

176. — Assignee, Liability of, to creditor of the factory—Contract to take over.—A, by deed duly registered, assigned his interest in an indigo factory to B. In the deed was a recital that it had been agreed that B should take over the dema powna account of the factory as the same stood on the 30th September 1856. C sued A and B jointly to recover rent in respect of lands which had been occupied under a lease from C with and for the use of the factory, and which was due on the 30th September 1856. B raised the defence that the debt was not included in a schedule, dated 30th September 1856, signed by A, and which he alleged had been furnished to him by A as containing a list of the liabilities of the factory. Held, if a trader or other person in this country assigns his stock in trade and effects to another, and such other person enters into a contract with the first to pay the debts of the concern, or a certain portion of such debts, the contract and assignment create a liability to the creditors in whose favour such contract is made, which they may enforce by suit; nor is the creditor bound to elect between this original debtor and the assignee, but he may join them as co-defendants in the same suit. Held also (SINGH and SINGH-KAR, JJ., dissenting), the case must be remanded to the lower Court to try what was the agreement between A and B as to B taking over the dema powna account of the factory, whether the schedule was an essential part of the contract or not. KANAKS v. BHAWANT CHAMAN MITTAR [B. L. R., Sup. Vol., 54: W. R., F. R., 167]

177. — Liability of Bond given by former proprietor.—When the holder of a bond from the former assignee to creditor—Bond given by former proprietor. PHOOT KOONWAB v. CHARDON [6 W. R., Act X, 89]

178. — Right of purchaser to trees standing on land—Sale of land—Transfer of Property Act (IT of 1882), s. 8.—Trees being attached to the earth are included in the legal incidents of the land and pass to the transferee under a deed of sale of the land on which they stand, unless a different intention is expressed or necessarily implied. No such intention is necessarily implied because the trees are mortgaged prior to the sale and no mention of the mortgage is made in the sale-deed. PANDURANG SHESHAIAH v. BHIMRAV KESNAV HIRALIKAR 1 I. L. R., 22 Bom., 610

179. — Right to rescind sale—Concealment of defect in title—Transfer of Property Act (IT of 1882), s. 55—Meaning of words "material defect in property."—The expression "material defect in property" in s. 55 of the Transfer of Property Act (IT of 1882) includes a defect in the title to an estate. Such a defect, if concealed by the vendor, gives the purchaser the right to rescind the sale. BISSA SUBRAMAN v. DAYABAI PARMANANDAS 1 I. L. R., 20 Bom., 522

180. — Ground for setting aside sale—Stipulation to have mutation of names—Refusal of revenue authorities to register name of purchaser.—Where a person purchased certain lands under a deed of sale, in which the vendor undertook to apply to the revenue authorities for the transfer of the lands to the name of the vendee, and did so, and both persons clearly understood what they were doing, —Held that the refusal of the revenue authorities to enter the purchaser's name in the mutation register did not constitute a ground for cancelling the sale and recovering the purchase-money. GEDDERA KOTTA v. DEBENDRO NARAYAN KOWAR [25 W. R., 352]

181. — Bond from guardian of Hindu widow acting collusively.—The plaintiff was entitled, in right of her deceased husband, to the equity of redemption in a mortgaged estate. Her guardian, in collusion with the mortgagee, instituted a foreclosure suit, in which she was represented by the guardian, who submitted to a decree, and under that decree the property was sold, and the defendant became the purchaser. Held that, the defendant being a bond-fide purchaser, the sale was not liable to be set aside. KHESTERMONI DASSIE v. KISHANMIONU MITTAR Marsh., 313

S. C. KISHAN MIONU MITTAR v. KHESTERMONI DASSIE 2 May, 196

VENDOR AND PURCHASER—continued.

15. PURCHASERS, RIGHTS OF—continued.
Proprietor of an indigo factory had made no demand on it for twelve years, nor appraised the assignee of its existence as a debt due by the factory, it was held that he could not come down on the present proprietors, but must look to the obligor of the bond personally for satisfaction. HUBERUNISSA v. COX [W. R., 1864, 266]

178. — Right of purchaser to trees standing on land—Sale of land—Transfer of Property Act (IT of 1882), s. 8.—Trees being attached to the earth are included in the legal incidents of the land and pass to the transferee under a deed of sale of the land on which they stand, unless a different intention is expressed or necessarily implied. No such intention is necessarily implied because the trees are mortgaged prior to the sale and no mention of the mortgage is made in the sale-deed. PANDURANG SHESHAIAH v. BHIMRAV KESNAV HIRALIKAR 1 I. L. R., 22 Bom., 610

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S. C. KISHAN MIONU MITTAR v. KHESTERMONI DASSIE 2 May, 196

VENDOR AND PURCHASER—continued.
18. VENDOR, RIGHTS AND LIABILITIES
OF—continued.

to such purchase, and are not bound to deliver the goods until they are reimbursed or secured for such advances and liabilities, and an agent in this character is in the position of an unpaid vendor. Where the vendor is not otherwise paid than by having received the insolvent's acceptance, he may, in the event of the purchaser's insolvency, stop the goods, though he have negotiated the bills, and they are still outstanding and not yet at maturity. Whilst the goods sold remain in the hands of the carrier employed to convey them to their original destination, as between buyer and seller, no case of constructive possession arises, unless when the carrier enters expressly into some new agreement, distinct from the original contract for carriage. So also the mere acts of making or sampling the goods, or giving notice to the carrier to hold the goods for the buyer, though done with intention to take possession, do not establish a constructive possession, or affect the right to stop in transitu. Where the right of stoppage in transitu vests in the consignee, it cannot be defeated by the claims of other creditors of the consignee, the unpaid vendor having an elder and preferential lien. BHOTANATH v. BAIY NATH. 2 Agre, 11

189. *Stoppage in transitu—Railway receipts—Effect of endorsing railway receipts—Title of endorse of such receipts—Contract Act (IX of 1872), s. 103.*—The firm of C D carried on business in Bombay. A, the agent of the firm, bought from the first defendant H at Bijnapur a quantity of wheat which at A's request was on the 28th and 29th May 1869 consigned by H to the firm of C D at Bombay, on the understanding that the consignees were not to have the wheat until they had paid the hundis drawn in respect of it. The wheat was sent to Bombay on the 28th and 29th May 1869, in three consignments, viz., of 56, 104, and 181 bags respectively, and two hundis for ₹1,000 and ₹1,500 respectively payable at sight were drawn by A in Bijnapur on the firm of C D in Bombay, and were given by him to H, who thereupon handed to A the three railway receipts for the three consignments which had been despatched by the first defendant's agent at Bijnapur agent in Bombay for collection. The hundis for ₹1,000 arrived in Bombay on the 31st May, and was paid on the 1st June. The hundis for ₹1,500 arrived in Bombay on the 1st June, and was dishonoured on the 2nd June by the firm of C D, which afterwards stopped payment and became insolvent. The railway receipts given by H to A at Bijnapur were in the following form: "Received from H the undermentioned goods, 181 bags of wheat. This receipt must be produced by the consignee, or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignee, or this railway receipt, is sold one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a counter-stamp. If more than one order appears on the face

VENDOR AND PURCHASER—continued.
18. VENDOR, RIGHTS AND LIABILITIES
OF—continued.

of consideration; but the District Judge found that the plaintiff was entitled to have the land, and that the defendant might sue for the purchase-money. Held that the equitable doctrine of the vendor's lien for unpaid purchase-money applied to the case, but as the District Judge had not decided whether the defendant had succeeded in proving that the purchase-money had not been paid, the suit should be remanded for a finding by him on that issue. XETAPPA BIN BISAPPA v. MANTAPPA BIN BASAPPA. [3 Bom., A. C., 102

186. *Contract to sell—Rescission—Re-sale by registered deed—A sued to recover certain land which he claimed under a registered deed of sale executed by the owner. Prior to the date of this sale to A, M had been put in possession of the land under an agreement to purchase the land for ₹300. The sale-deed to M had not been executed because only ₹200 of the purchase money had been paid to the owner. Held that A could not recover, as it was not open to his vendor to rescind the contract with M. MOWBRAY v. AVABAN. I. L. R., 11 Mad., 263*

187. *Failure to pay portion of purchase-money.*—The vendee of certain land, a portion of which only was in their possession by virtue of the sale, the rest being in the possession of mortgagees, sued for a declaration of their right to such land, and to have a sale of a portion of such land, made after it had been sold to them, set aside. Held that, inasmuch as the sale to them had taken effect, they were entitled, notwithstanding the whole of the purchase-money might not have been paid, to a decree as claimed, and the vendors, if they had any claim in respect of the purchase-money, should be left to seek their remedy. KESARI v. GANGA PRASAD. I. L. R., 4 All., 168

188. *Stoppage in transitu—Lien of unpaid vendors—Agents for purchase of goods—Insolvency—Right of carriers.*—A firm at Calcutta sent an agent to Sarnam, plaintiff's residence, to effect purchases in cotton, and the plaintiff, at the instance of the person so deputed, made purchases and supplied funds, both for purchases and for their carriage and insurance, the agent doing nothing but consenting to the arrangements and giving hundis on his employer's correspondents in payment. The goods were despatched and insured, but before reaching their destination the firm became insolvent, and the plaintiff proceeded to take possession of them, but was prevented on account of the goods being previously attached by the defendant, a judgment-creditor. It was held on plaintiff's suit that the plaintiff was an unpaid vendor, and had a lien on the goods for the price, and might detain the goods till he received or was satisfied about the payment for the said goods, a completed contract for the sale of the goods notwithstanding. An unpaid vendor, in case of the vendee's insolvency, may stop the goods sold in transitu. Agents for the purchase of goods have a lien on the goods when purchased for the money paid and liabilities incurred by them in respect

VENDOR AND PURCHASER—continued.

18. VENDOR, RIGHTS AND LIABILITIES

liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. *NIKKAR LAMH v. GUNOMANI DARI* [7 B.L.R., P. C., 113: 15 W.B., P. C., 38]

19. MISCELLANEOUS CASES.

187. Deed of sale, Proof of—*Suit for possession under deed of sale—Necessity of deed of sale.*—In a suit for possession of land on the ground of title under a kobaia, it is not enough for the plaintiff to prove the writing and signature of the kobaia; he must also prove that it was delivered as a complete instrument. *OVERATI v. NIDHEE-RAY* 22 W.R., 367

188. Fictitious sale—*Mortgage*—*Suit by purchaser for confirmation of possession*—*Issues.*—Where a sale by A to the plaintiff had taken place shortly before a mortgage of the same property by A to the defendant, the defendant is entitled to have raised, in a suit brought for confirmation of possession and to declare the sale valid, an issue whether the sale was *bona fide* and for consideration, and whether possession passed under it to the plaintiff. The proper issue is not whether the deed of sale was genuine or not. *GARBHAT BHAGAT v. KUNALAT SING* 7 B.L.R., 4P., 33

189. Owner standing by and seeing property sold—*Right to have sale set aside.*—The rule that one who, knowing his own title, stands by and encourages a purchase of property as another's, will not be allowed to disprove the validity of the sale, implies a willful misleading of the purchaser by some breach of duty on the owner's part. In this case there was nothing more than mere quiescence. *BASWANTARA SHADAPA v. RAY* [I.L.R., 9 Bom., 86]

200. Purchaser from husband—*Acquiescence of wife—Suit to set aside purchase as being wife's property.*—Where a husband was alleged to have given a share in some property to his wife, and the husband subsequently sold the whole property to another party, and put the said party in possession, without any objection from the wife, who for years behaved as though she had no interest in the property other than that arising from her husband's possession of it in his own right.—*Held* that a person afterwards claiming to have purchased the wife's share, and seeking to be put in possession, could not displace the *bona fide* purchaser from the husband, for a person in the position of the wife in this case, who chooses to stand by for years not asserting her rights, but allowing another to deal with her property as his own, has no equity to come into Court and eject any one who has purchased in ignorance of her title. *Sootar Mahomed v. Mahomed TORAB* 25 W.R., 281

201. Grant of estate when having bad title—*Vendor afterwards obtaining good title—Specific Relief Act (I of 1877), s. 18—A.* holding a certain mehal as a ghatwal, mortgaged it

VENDOR AND PURCHASER—continued.

18. VENDOR, RIGHTS AND LIABILITIES

any purchased the house belonging to Ghousiah Begum Sabina (plaintiff) for Rs. 16,000, that he had paid Rs. 1,000 as an advance and taken possession, that he would pay the balance with interest at the rate of 11 per cent. per mensem within fifteen days, and obtain a sale-deed from the said Begum. The plaintiff at the time of the agreement had not obtained a conveyance of the house to her, and was not able to tender a conveyance to the defendant until January 1887, when she did so. Meanwhile the defendant took possession under the agreement, paying only a portion of the balance of the purchase-money; he also executed certain repairs to the house, and let it to a tenant and enjoyed the rent. It further appeared that shortly after the above agreement he sought to obtain a sale-deed from the plaintiff and attempted to raise a sum of money on a mortgage of the house. On 22nd December 1885 the defendant wrote to the plaintiff demanding a conveyance and giving notice that, if the sale be not completed in the following month, the interest on the balance of the purchase-money should cease; but no evidence was given as to any appropriation of the purchase-money by the defendant. In 1887 the plaintiff filed the present suit to recover the unpaid purchase-money with interest at 12 per cent. *Held* that the acts of the defendant amounted to a waiver of the implied covenant for title, and that the plaintiff was entitled to recover the unpaid purchase-money with interest at the agreed rate up to the date of payment, and that he was further entitled to a lien on the property for that amount. *GHOUSIAH BEGUM v. GHOSIAH* [I.L.R., 13 Mad., 156]

194. Lien—*Creditor*—*Right of, to lien—Mortgage.*—Although an unpaid vendor holds a lien upon property sold for the consideration-money, yet a creditor of that vendor cannot claim the same right. *HARI RAY v. DEMA-PUR SINGH* [I.L.R., 9 Cal., 167: 11 C.L.R., 339]

195. Conditions of sale—*Sale by Government—Auction-sale of confiscated property—Ground for setting aside sale.*—Where it was made a distinct condition of sale that the property should be sold to the highest bidder, without any restriction of the purchaser being a rebel or not, —*Held* that the Government may, like any other seller, impose any condition it pleases in reference to the property which it offers for sale, prior to sale, but is not at liberty subsequently to the sale to disaffirm or annul it on a ground not only novel but different at variance with the terms on which it offered the property for sale. *SEVA LATA v. MAHOMED* 2 Agra, 160

196. Vendor keeping vendee out of possession—*Suit for partition—Trustees—Mesne profits.*—Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though

VERBAL CONTRACT.

See LIMITATION ACT, 1877, ART. 75.
[I. L. R., 3 Cal., 619.]

VERDICT OF JURY.

1. GENERAL CASES
2. POWER TO INTERFERE WITH
VERDICTS
Col. 9420

See ACQUITTAL.

[I. L. R., 22 Cal., 377]
See APPEAL IN CRIMINAL CASES—PRAC.
TICE AND PROCEDURE.
[I. L. R., 21 Cal., 955]
See CRIMINAL PROCEEDINGS.

[I. L. R., 20 Mad., 445]
See EVIDENCE—CRIMINAL CASES—CON-
SIDERATION OF, AND MODE OF DEAL-
ING WITH, EVIDENCE.

[I. L. R., 13 Mad., 426]
See MAGISTRATE, JURISDICTION OR—
POWERS OF MAGISTRATES.
[I. L. R., 9 All., 420]
See CASES UNDER REFERENCE TO HIGH
COURT—CRIMINAL CASES.

See CASES UNDER REVISION—CRIMINAL
CASES—VERDICT OF JURY AND MISDI-
RECTION.

1. GENERAL CASES.

1. Verdict of majority—Want a
independent opinion.—The law requires a juryman
to exercise his own understanding on the case sub-
mitted to him, and to decide on evidence and not to
follow blindly the opinion of his fellows. Where
one out of three (in a jury of five) depends on the in-
spection and inquiries of the other two, the verdict
of the three is not that of a legal majority. PERAR-
UR JAGI v. NARAYAN. 25 W. R., Cr., 2.

2. Ground for refusing to ac-
cept verdict—Verdict based on voluntary con-
fessions.—Wherever trial by jury exists, the verdict
of the jury must be accepted, unless it is manifestly
and certainly wrong. A verdict based on voluntary
confessions is just as good as a verdict based on the
testimony of credible witnesses. It is the province
of a jury to decide as to the credibility of witnesses.
QUREN v. WUZIR MUNDUL. 25 W. R., Cr., 25.

3. Unanimous verdict—Further
consideration of case by jury—Dissent by Judge
from unanimous verdict.—It is only in
a case where the jury are not unanimous that a
Court may require them to retire for further con-
sideration. Where a verdict is unanimous, it must be
received by the Judge, unless contrary to law.
Where a Judge dissents from the unanimous finding
of a jury given in accordance with the law, the only
procedure open to him to follow is that laid down in

VENDOR AND PURCHASER—concluded.

19. MISCELLANEOUS CASES—concluded.
November 1870, the full estate of an owner, carrying
with it the right of pre-emption, vested in A, and it
was competent for him to enforce such right by suit.
Kamuran Lal v. Amrita Kuar, I. L. R., 3 All., 369,
distinguished. BHAGAN v. MUSHAK AHMAD
[I. L. R., 5 All., 324]

205. Condition

against alienation.—The co-sharers of a certain
estate sold it to K. On the same day as the vendors
executed the conveyance of such estate to K the latter
executed an instrument whereby he agreed that the
vendors might redeem such estate or any portion
thereof, within a certain term, on repayment of the
purchase money or a proportionate share thereof, and in
such case the sale would be considered cancelled: pro-
vided that the vendors paid the money out of their own
pockets and did not raise it by a transfer of the pro-
perty, and not otherwise. The heir of one of the
vendors sold his share of such estate to A, and A
sued K to redeem such share. Held by the Full
Bench (STUART, C.J., doubting) that the nature of
the transaction between them was one of mortgage,
and the vendors had a right of redemption, and the
proviso in the agreement was inequitable and incapable
of enforcement against them or their representatives
in title. Held also by PARSONS, J., that the agree-
ment was not of the nature of a personal contract en-
forceable only by the original vendors, and not by their
representatives; that, assuming that a transfer of the
property was prohibited by the agreement, K could
not, as implied by the Full Bench ruling in Dookh-
chore Rai v. Hidayat-oolah, Agwa, B. B. Ba.
1874, 5, treat as a nullity the sale which had been
made to A, and A's right to redeem could not be
reasonably denied and resisted; and that a transfer
was not positively, but only implicitly, prohibited by
the agreement, K merely declaring that he would not
recognize the transferees as having acquired the
equity of redemption or cancel his own sale-deed, and
such a declaration was beyond his competence and
had no legal effect. RAM SARAN LAL v. AMRITA
KUAR. I. L. R., 3 All., 369

206. Specific Relief
Act (I of 1877), s. 18 (a)—Transfer of Property
Act (I of 1882), s. 43.—A member of an undivided
Hindu family consisting of himself, his adopted son,
and his uncle, sold certain land belonging to the
family to the plaintiff. In a suit by the plaintiff for
a declaration of his title to, and for possession of, the
land, it appeared that the sale was not justified by
any circumstances of family necessity; and an objec-
tion that was taken to the adoption was overruled
and the adoption held to be valid. During the
pendency of the suit the undivided uncle died, having
made a gift of his property to his daughter-in-law,
which gift was held to be invalid. Held that, under
s. 16 (2) of the Specific Relief Act, together with
s. 43 of the Transfer of Property Act, the plaintiff
was entitled to a moiety of the land sold to him.

VIRAYYA v. HANUMANTA I. L. R., 14 Mad., 459

VERDICT OF JURY—continued**2. POWER TO INTERFERE WITH VERDICTS—continued.**

in the High Court under s. 263 of Act X of 1872, the Court will adhere generally to the principle of the Courts in England, viz., that the Court will not set aside the verdict of a jury unless it be perverse or the Judge is satisfied with the verdict, or whether he would have come to the same conclusion as the jury, but whether the verdict was such as reasonable men ought to have come to. *IN THE MATTER OF DUREN KAZER EXPRESS DUREN KAZER*

(I. L. R., 9 Cal., 53; 11 C. L. R., 169)

20. — *Exercise of powers of High Court—Criminal Procedure Code, 1872 s. 263.*—The Court should exercise the powers vested in it by s. 263 of the Criminal Procedure Code (X of 1872) only when it finds the verdict of the jury clearly and patently wrong, and only at such verdict aside, even if the Sessions Judge disagrees with it, when it is found unsustainable by the evidence. *QUEEN v. SHAM BAOJI*

(13 B. L. R., Ap., 19; 20 W. R., Cr., 73)

QUEEN v. NOBIN CHUNDER BANERJEE
(13 B. L. R., Ap., 20; 20 W. R., Cr., 70)

QUEEN v. IRWARYA 14 P. L. R. Ap. 1
QUEEN v. HURNO MAJJI 14 B. L. R., Ap. 1
(14 B. L. R., Ap., 3 note; 21 W. R., Cr., 4)

21. — *Inconsistencies in evidence otherwise sufficient for conviction—Criminal Procedure Code, 1872, s. 263.*—Where there are reasons sufficient to warrant a jury in disbelieving the witnesses and in giving the prisoner the benefit of the doubt raised by inconsistencies in that evidence, although another jury might have come to a different conclusion, the High Court will not interfere. It must be shown that the verdict of the jury is certainly unreasonable and perverse. *QUEEN v. SHAM BAOJI* 13 B. L. R., Ap., 19; 20 W. R., Cr., 73, cited and followed. *IN THE MATTER OF HURNO MAJJI MOOKERJEE* 3 C. L. R., 518

22. — *Exercise of power of interference—Ground for setting aside verdict—Verdict contrary to Judge's charge to jury.*—Where a verdict is given contrary to the charge of the Judge

Contra, QUEEN v. SHAM BAOJI 13 B. L. R., Ap. 19
(18 W. R., Cr., 40)

23. — *Omission to sum up properly—Ground for setting aside verdict—*

VERDICT OF JURY—continued**2. POWER TO INTERFERE WITH VERDICTS—continued.**

be laid down as to such a case, but in general, if the finding of the jury in such a case is one that an Appeal Court would set aside if the trial had taken place with assessors, the Court will interfere and set the verdict aside. *REG. v. PATTECHAND VASTACHAND*
(5 Bom. Cr., 85)

24. — *Criminal Procedure Code, 1872, s. 263—Ground for setting aside verdict.*—The High Court set aside the Judge's verdict on the ground that the Judge pointed out the case of the jury to the jury to be found guilty or exonerated of certain documents. *QUEEN v. OTIS PAIR*
(23 W. R., Cr., 21)

25. — *Inconsistent verdict of guilty—Where a jury found a verdict of guilty, but the Judge found it inconsistent with the evidence.*

Judge ought to have explained to the jury that the testimony of eye witnesses was not necessary for the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived. *QUEEN v. GOROOT KANAR*
(25 W. R., Cr., 36)

26. — *Criminal Procedure Code, 1872, s. 263—Discretion of Court—Setting aside verdict of acquittal of murder.*—A very large discretionary power is vested in the High Court by s. 263 of the Code of Criminal Procedure. No fixed rules can be laid down for the exercise of that discretion in every instance, and the decision in each case submitted must depend upon its own peculiar circumstances. In this case the Court set aside a verdict of acquittal of murder. *QUEEN v. MURRAY KEMAR* 1 C. L. R., 278

27. — *Judge's discretion with verdict—Criminal Procedure Code, 1872, s. 263—Ground for setting aside verdict.*—On a trial by jury before a Sessions Judge, the jury returned a verdict of guilty. The Judge charged the jury with the verdict, and submitted the case to the High Court. Held that the High Court had power to set aside the verdict of the jury, and to direct an acquittal. *QUEEN v. MURRAY KEMAR*
(11 B. L. R., 14; 20 W. R., Cr., 1)

28. — *Judge's discretion from verdict—Arrest of a person by a private citizen—Criminal Procedure Code, 1872, s. 263—Where a*

VERDICT OF JURY—continued.**2. POWER TO INTERFERE WITH VERDICTS—continued.**

jury are not unanimous in their finding, and the Judge dissents from the opinions expressed by them, on the case being referred, under s. 263 of Act X of 1872, the High Court is competent to find the prisoner guilty, notwithstanding an acquittal by the majority of the jury. *EMPRESS v. SAHAI RAI*

[I. L. R., 3 Cal., 623; 2 C. L. R., 304]

29. *Criminal Procedure Code, 1872, s. 263—Verdict of acquittal—Power to reverse verdict of acquittal.*—Where the jury acquitted the prisoners on the charges framed, but found certain facts which amounted to another offence, and omitted to convict the prisoners of that offence, as provided by s. 457 of the Criminal Procedure Code, *Held* that the High Court could, on the case coming before them under s. 263 of the Criminal Procedure Code, find the prisoners guilty of such offence. *EMPRESS v. HARAI MIRDHA*

[I. L. R., 3 Cal., 189]

30. *Criminal Procedure Code, 1872, s. 263—Acquittal by jury.*—The High Court, acting under s. 263 of the Criminal Procedure Code, 1872, convicted the accused in this case on the facts, notwithstanding the verdict of acquittal come to by the jury. *QUEEN v. SIDHAM SIRCAR*

[20 W. R., Cr., 18]

31. *Criminal Procedure Code, 1872, s. 263—Acquittal by jury—Confession—Evidence Act, s. 29.*—The Court on a consideration of the evidence set aside the verdict of acquittal come to by a majority of the jury, holding that a confession made by the accused before the Assistant Magistrate was good, such confession, even if obtained by deception, being admissible under s. 29 of the Evidence Act, 1872. *QUEEN v. RAM CHURN GHOSE*

20 W. R., Cr., 33

32. *Criminal Procedure Code, 1872, s. 263—Acquittal by jury.*—The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing on that point from the jury, referred the case to the High Court under s. 263 of the Code of Criminal Procedure. *Held* that in a case of this kind the High Court will not interfere without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by s. 263, Code of Criminal Procedure. On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to. *QUEEN v. DOORJODHUN SHAMONTO alias DEEJOHOR*

19 W. R., Cr., 45

33. *Verdict of acquittal by jury—Criminal Procedure Code, 1872, s. 263—Judge disagreeing from verdict of majority.*—A majority of the jurors (four out of five) acquitted the prisoner on a charge of attempt to commit rape. The Sessions Judge disagreed with that verdict, and referred the case to the High Court under s. 263 of

VERDICT OF JURY—continued.**2 POWER TO INTERFERE WITH VERDICTS—continued.**

the Code of Criminal Procedure, because in his opinion the offence charged was proved. The High Court found that the evidence for the prosecution was fully worthy of belief and consistent with probabilities, and sentenced the prisoner. *IN THE MATTER OF TILUCK-DHAREE*

2 C. L. R., 1

34. *Criminal Procedure Code, 1872, s. 263—Interference with verdict of majority of jury where Sessions Judge differed.*—The Sessions Judge, differing from a majority of the jury, who acquitted the accused, referred the case to the High Court under s. 263 of the Criminal Procedure Code, 1872, to be dealt with as an appeal. Before proceeding with the case, the High Court considered it fair to the accused to give him notice to bring forward any objections he might have to the Sessions Judge's recommendation. On a consideration of the evidence, the High Court convicted the accused of the offence with which he had been charged in the Court below. *QUEEN v. OOTUM DHOBA*

[19 W. R., Cr., 38]

35. *Criminal Procedure Code, 1872, s. 263—Differing from verdict of acquittal by jury.*—Where the Sessions Judge did not consider a confession to have been induced by illegal pressure, the High Court, upon a reference under s. 263 of the Code of Criminal Procedure, held it to have been properly admitted, and finding it to be full and clear, and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the jury. *REG. v. BALVANT V. PENDHARKAR*

11 Bom., 137

36. *Criminal Procedure Code, 1872, s. 263—Trial on different charges—Discharge on some charges on which jury and Sessions Judge agree—Reference of whole case to High Court.*—In a case in which the accused were charged with murder (s. 302, Penal Code), culpable homicide not amounting to murder (s. 304), and voluntarily causing grievous hurt (s. 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (s. 457). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regarded the three original charges, and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under s. 263 of the Criminal Procedure Code. *Held* that where (as in this case) the Sessions Judge had approved of a verdict on certain charges, and finally acquitted and discharged the accused as to these charges, the High Court could not under s. 263 convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there

VERDICT OF JURY—continued.

2. POWER TO INTERFERE WITH VERDICTS—continued.

was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges the High Court presumed that the reason

finding in the charge was, and the verdict actually of the unanimous jury on the first three counts. *QUEEN v. DYER CHANOA*, 20 W. R., Cr., 73

37. — *Verdict in accordance with charge—Verdict disagreed with by Judge—Penal Code, ss. 302, 304, 325—Reference under s. 307, Act X of 1892—A prisoner was charged under ss. 302 and 304 of the Penal Code, and the Judge at the trial added a further charge under s. 325. The Judge in his charge to the jury directed him to find the charges or might find the jury unanimously framed acquitted him a majority of the jury finding as and referred s. 307 of the Criminal Procedure Code. The High Court refused to interfere, on the ground that the error was not material, and having no effect on the verdict. *JACQUIET v. JACQUIET*, 11 Cal., 86*

38. — *Criminal Procedure Code, 1892, s. 307—Jury wrongly treated as sessions by Judge—Unanimous opinion of jury accepted as formal verdict—L. J. Mad., 42*

39. — *Criminal Procedure Code, s. 307—Lowers of High Court on reference under s. 307—Criminal Procedure Code, ss. 418, 423 (d)—No trial can be legally speaking, concluded until judgment and sentence are passed, and the trial of a case referred by a Sessions Judge to the High Court under s. 307 of the Criminal Procedure Code remains open for the High Court to conclude and complete, either by maintaining the*

VERDICT OF JURY—continued.

2. POWER TO INTERFERE WITH VERDICTS—continued.

verdict of the jury and causing judgment of acquittal to be recorded or by setting aside the verdict of acquittal and causing conviction and sentence to be entered against the accused. The provisions of s. 307 of the Criminal Procedure Code are not in any way

of the sessions Judge, of its powers, procedure, the own view of over, but in judge no less to its proper. *J. L. R., 1*

40. — *Sessions Judge, Opinion of—Criminal Procedure Code, s. 307—of its powers, procedure, the own view of over, but in judge no less to its proper. J. L. R., 1*

Dom, 10, 1901. J. L. R., 275; The Empress v. Dhanum Kaste, 1 I. R., 9 Cal., 63. Queen-Empress v. Mama Dyal, 1 L. R., 10 Bom., 497, The Queen v. Ram Churn Ghose, 20 W. R., Cr., 55, The Queen v. Azam Baghi, 13 B. L. R., Ap. 19 20 W. R., Cr., 78. The Queen v. Hurreo Wanyhee, 14 B. L. R., Ap. 2 21 W. R., Cr., 4. The Queen v. Wazir Munda, 25 W. R., Cr., 25, The Queen v. Nobin Chander Banerjee, 10 B. L. R., Ap. 20 20 W. R., Cr., 70, referred to QUEEN-EMPRESS v. ITWARI SAHU

[I. L. R., 15 Cal., 309]

41. — *Criminal Procedure Code, ss. 307, 418—Procedural error of verdict—Procedure when sessions Judge disagrees with verdict—Sessions Judge accepted the verdict, although he said he did not agree with it and had charged the jury for an acquittal; he observed that he could not refer the verdict as perverse since there was evidence against the accused which it was open to the jury to believe. The accused appealed to the High Court on the ground (inter alia) that the sessions Judge ought to have referred the case to the High Court under the Criminal Procedure Code, s. 307. Held that since there had been no misdirection by the sessions Judge, and there was no evidence to support the verdict, the High Court had no power to interfere, however absurd the verdict might be considered. *QUEEN-EMPRESS v. CHITRA DEVI**

[I. L. R., 14 Mad., 30]

42. — *Criminal misapplication of charge of misapprehension of specific facts of case—L. J. Mad., 42*

specific facts of case—L. J. Mad., 42

specific facts of case—L. J. Mad., 42

specific facts of case—L. J. Mad., 42

VERDICT OF JURY—continued.**2. POWER TO INTERFERE WITH VERDICTS—continued.**

accused was charged with abetting the offence of criminal breach of trust committed by the nazir of the Small Cause Court at Poona. The accused was a karkun in the nazir's office, and it was his duty to keep the accounts of moneys received in the office from judgment-debtors, and of moneys paid out to decree-holders. He was charged with abetting the misappropriation of three sums, viz., R20 on the 19th November 1885, R45 on the 23rd November 1885, and R10 on the 26th June 1886. As to the first sum, it was alleged that an instalment of R25 due under a decree had been paid into the nazir's office by a judgment-debtor on the 19th November 1885, but the accused had entered in the office day-book only R5, thereby enabling the balance of R20 to be misappropriated. It appeared however, that a sum of R25, being the instalment due to the decree-holder under the above decree, had been in due course paid out to him on the 4th December 1885. As to the second sum of R45, it was alleged that a sum of R50 had been paid in, but only R5 had been entered by the accused, the balance being misappropriated. It appeared, however, in this case also that the full amount of the instalment, viz., R50, had been duly paid out to the decree-holder a few days after its receipt. As to the third sum, it was alleged that the total receipts entered in the book on the 26th June 1886 were R55, but the figure entered as the total was only R45, and that the balance of R10 had been misappropriated. The jury found the accused guilty on all three charges. On appeal by him, it was contended that there was no evidence of the misappropriation of the specific sums in respect of which he was charged. There was evidence of a general deficiency; but there was no evidence that these specific sums formed part of that deficiency. On the contrary, the evidence showed that the instalments paid into the office had been duly paid out to the persons to whom they were payable. *Held* that, the jury having had the facts brought to their notice, their verdict was final, and the High Court would not interfere with the verdict. The provisions of s. 167 of the Evidence Act (I of 1872) apply to criminal trials by jury. When part of the evidence which has been allowed to go to the jury is found to be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under s. 167 of the Indian Evidence Act (I of 1872) or to quash the verdict and order a re-trial. The law, as settled in England by the *Queen v. Gibson*, *L. R.*, 18 *Q. B. D.*, 537, and as stated by the Privy Council in *Makin v. Attorney-General of New South Wales*, *L. R.* (1894), *A. C.*, 57 (69, 70), with reference to the granting of new trials where evidence has been improperly admitted, does not apply to India. *Wafadar Khan v. Queen-Empress*, *I. L. R.*, 21 *Cal.*, 955, not followed. *QUEEN-EMPRESS v. RANCHANDRA GOVIND HARSHE* . *I. L. R.*, 19 *Bom.*, 749

VERDICT OF JURY—continued.**2. POWER TO INTERFERE WITH VERDICTS—continued.**

provocation—Loss of self-control—Criminal Procedure Code (1882), s. 307—High Court's power of interfering with the verdict of a jury.—The accused was tried for murder. The first verdict of the jury was "guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return a simple verdict of guilty or not guilty. The jury, therefore, brought in a second verdict of "not guilty." The Judge, considering this verdict to be perverse, referred the case to the High Court under s. 307 of the Code of Criminal Procedure (Act X of 1882). *Held* that the High Court will not interfere with the verdict of a jury unless it is shown to be clearly and manifestly wrong. A verdict ought to be considered a proper and not a perverse verdict if it is one which reasonable men might find on the facts in evidence. *Queen-Empress v. Dada Ana*, *I. L. R.*, 15 *Bom.*, 452, and *Queen-Empress v. Magana*, *I. L. R.*, 14 *Bom.*, 115, followed. *QUEEN-EMPRESS v. DEVJI GOVINDJI*

[*I. L. R.*, 20 *Bom.*, 215]

44. *Criminal Procedure Code (1882), ss. 297 and 423, cl. (d)—Misdirection to jury—Allowing verdict before accused is called on for defence.*—To allow the jury to pronounce their verdict before the accused is called upon to enter on his defence is a misdirection, though the Judge omits to charge the jury at all. In such a case, cl. (d) of s. 423 of the Criminal Procedure Code does not stand in the way of the Appellate Court's interfering with the verdict of the jury. *QUEEN-EMPRESS v. IMAM ALI KHAN alias NATHU KHAN* . *I. L. R.*, 23 *Cal.*, 252

45. *Criminal Procedure Code, 1882, ss. 303, 307, 429—Power of Judge to put questions to jury under s. 303 after verdict delivered—Reference to High Court under s. 307—Power of High Court to interfere with verdict—Judges of High Court differing in opinion—Reference to third Judge—Letters Patent, 1865, cl. 36—Practice—Procedure.*—A prisoner was tried for murder and acquitted by a majority of the jury. The Sessions Judge disagreed with the verdict and submitted the case to the High Court under s. 307 of the Criminal Procedure Code (Act X of 1882). The Judges of the High Court (*JARDINE* and *CANDY, JJ.*) differing in opinion, the case was laid before a third Judge (*SARGENT, C.J.*) under s. 429, who held that the verdict of the jury should be set aside, and that the prisoner was guilty of murder. *Per SARGENT, C.J.*—It is the uniform practice of the High Court, in cases referred under s. 307 of the Criminal Procedure Code (Act X of 1882), not to interfere with the verdict of a jury except when it is clearly and manifestly wrong. There is no true analogy between the discretionary power conferred on the High Court under this section and that which the Courts of law in England have exercised in interfering with the finding of a jury in civil actions by directing a new trial on the ground of the verdict

43. *Special verdict—Murder—Culpable homicide—Grave and sudden*

VERDICT OF JURY—continued.**2. POWER TO INTERFERE WITH VERDICTS—continued.**

ferred on the High Court by s. 307. Where a prisoner was charged with murder by administering dhatara poison to the deceased, the majority of the jury found him not guilty. After the delivery of the verdict, the Sessions Judge questioned the jury, who, in reply to specific questions on the points, stated doubts from a poisoner the

The Sessions Judge differed so completely with the jury on the evidence that he submitted the case to the High Court under s. 307 of the Criminal Procedure Code *Per JARDINE, J.*—The verdict of acquittal should be upheld. It was not manifestly wrong nor absolutely unreasonable. It was a verdict that reasonable but cautious men might find. The Sessions Judge ought not to have put to the jury, after

the Sessions Judge was wrong in putting any questions to the jury after the verdict was delivered,

is bound to act upon its own view of the evidence

weight to the opinion of the Judge as well as to the verdict of the jury. When a case like the present depends upon the inferences to be drawn from two or three facts, neither principle nor statute forbids the Sessions Judge from asking the jury to state a plain case—finding on those facts. Where the Judges of the High Court differed in opinion in a case referred

said before a third Judge of the High Court, held, on opinion that the Criminal Procedure Code overrules the provisions of cl. 30 of the Letters Patent, 1865. *QUEEN EMPRESS v. BHADA AYA*

[I. L. R., 15 Bom., 452]

40. — *Criminal Procedure Code (Act X of 1882), s. 423—Setting aside verdict of the jury—Power of Appellate Court to deal with the case—If the verdict of the jury is set aside on any of the grounds mentioned in cl. (d) of*

VERDICT OF JURY—concluded.**2. POWER TO INTERFERE WITH VERDICTS—concluded.**

s. 423 of the Criminal Procedure Code (Act X of 1882), then there is no restriction on the powers of the Appellate Court to deal with a case of which it has complete seizure in any of the manners provided in that section. The law nowhere lays down that when the verdict of the jury is set aside the Court must necessarily direct a new trial. *Nasadar Aham v. Queen-Empress, I L R., 21 Cal., 255*, dissented from. The course adopted in *Queen-Empress v. O'Hara, I L R., 17 Cal. 642; Regina v. Naoraj Dadaabhai 9 Bom., II C, 359*, and *Queen-Empress v. Harilole Chander Ghore, I L R., 1 Cal., 207*, followed. *TAJU PRAMANK v. QUEEN EMPRESS, I. L. R., 25 Cal., 711*

VESTED INTERESTS.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS.

See SUCCESSION ACT, s. 68
[I. L. R., 4 Cal., 304]

See CASES UNDER WILL—CONSTRUCTION

VESTING ORDER.

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER.

[I. L. R., 17 Mad., 21]
I. L. R., 18 Mad., 21
I. L. R., 18 Bom., 232
II C. W. N., 372

See CASES UNDER INSOLVENT ACT, s. 7

VICE ADMIRALTY REGULATIONS OF 1832.

See JURISDICTION—ADMIRALTY AND VICE ADMIRALTY JURISDICTION
[I. L. R., 17 Cal., 337]

See LETTERS PATENT, HIGH COURT, 1875, cl. 15 . I. L. R., 17 Cal., 89

VICINAGE.

See CASES UNDER MAHOMEDAN LAW—PARTITION—RIGHT OF PARTITION—CO-SHARERS.

VILLAGE ACCOUNTANT.

See CRIMINAL PROCEDURE CODE, s. 42
[1872, s. 90] . I. L. R., 1 Mad., 200

VILLAGE CATTLE.

See PASTURAGE, RIGHT TO.

[I. L. R., 2 Bom., 110]

VILLAGE CHOWKIDAR.See BENGAL REGULATION XX OF 1817,
s. 21 . . . 18 W. R., 298

See VILLAGE CHOWKIDARS' ACT.

**VILLAGE CHOWKIDARS' ACT
(BENGAL ACT VI OF 1870).**

See CESS . . I. L. R., 22 Calc., 680

— s. 8—*Order imposing fine by Sub-divisional Officer—Judicial order—Revision by the High Court—Magistrate, Jurisdiction of.*—Where the collecting member of a panchayet, constituted under the provisions of the Village Chowkidars' Act (Bengal Act VI of 1870), was fined by the Sub-divisional Officer of Serampore under s. 8 of the Act for having disobeyed his orders and realized assessment from the villagers under the Act from the month of Baisakh, though the Act was not introduced into the sub-division till the month of Kartick following,—*Held* the fine having been imposed by a Magistrate under the provisions of an Act of the Bengal Council, it was imposed in respect of an "offence" as defined by s. 4, cl. (p), of the Criminal Procedure Code, and by virtue of s. 4 of Bengal Act V of 1867 the provisions of ss. 63 to 70 of the Penal Code and s. 61 of the Criminal Procedure Code were applicable to the fine. The order of the Sub-divisional Officer was in its nature a judicial order, and was therefore subject to revision by the High Court. The order was bad because (1) there was no trial; (2) no act punishable with fine under s. 8 of the Act (Bengal Act VI of 1870) had been committed; and (3) because the District Magistrate only had the power to impose the fine. *QUEEN-EMPRESS v. ASHWINI KUMAR GHOSE* [I. L. R., 23 Calc., 421]

— ss. 26, 27, and 34.

See PENAL CODE, s. 183.

[I. L. R., 25 Calc., 274]

— ss. 48 and 64—*Chowkidari chakran land, Settlement of—Power of Collector—Power of Commissioner to set aside Collector's order.*—Under s. 48 of Bengal Act VI of 1870, a Collector can only settle lands with the zamindar within whose estate the lands lie. S. 64 of that Act does not empower the Commissioner to set aside an order passed by the Collector under s. 48. *BEJOY CHAND MAHATAB BAHADUR v. KRISTO MOHINI DAS*

[I. L. R., 21 Calc., 626]

— s. 51—*Chowkidari chakran lands, Suit for recovery of, by patnidar against zamindar with whom the same had been settled under Bengal Act VI of 1870—Landlord and tenant.*—Where a patnidar sought to have transferred to him certain chowkidari chakran lands, which the Government had settled with the zamindar under Bengal Act VI of 1870, and where it was found that the lands were

**VILLAGE CHOWKIDARS' ACT
(BENGAL ACT VI OF 1870)—concluded.**

part of plaintiff's patni, and that the zamindar had sublet the same to a tenant,—*Held* that the patnidar was entitled to possession, but not to khas possession of the lands. That the tenant with whom the lands had been settled by the zamindar was entitled to retain actual possession of the lands. That the patnidar was bound to pay to the zamindar such rents for these lands as corresponded to the proportion between the gross collections and patni rent formerly payable by him. *HARI NARAIN MAZUMDAR v. MUKUND LAL MUNDAL* . . . 4 C. W. N., 814

— ss. 58, 61—*Decision of Commission—Village chowkidars—Chowkidari chakran lands—Civil suit.*—The words "final and conclusive" used in s. 61 of Bengal Act VI of 1870 must be taken to be used in their ordinary and literal sense. Where, therefore, a commission has been appointed under s. 58 for the purpose therein mentioned, and such commission has ascertained and determined that certain lands are chowkidari chakran lands, in the absence of fraud or non-compliance by the commissioners with the provisions of the Act, their decision is conclusive evidence in any civil suit of the fact that the lands are what they have found them to be. *NOBOKRISTO MUKERJEE v. SECRETARY OF STATE FOR INDIA*

[I. L. R., 11 Calc., 632]

**VILLAGE CHOWKIDARS' ACT
AMENDMENT ACT (BENGAL ACT
I OF 1892).**See CONFESSION—CONFESSIONS TO POLICE
OFFICERS . . . 2 C. W. N., 637**VILLAGE COURTS.**See SMALL CAUSE COURT, MOFUSSIL—
JURISDICTION—GENERAL CASES.

[I. L. R., 13 Mad., 145]

See SUCCESSION CERTIFICATE ACT.

[I. L. R., 21 Mad., 115]

VILLAGE MUNSIF.

See MUNSIF . . I. L. R., 7 Mad., 220

[I. L. R., 8 Mad., 500]

I. L. R., 5 Bom., 180

I. L. R., 15 Mad., 131

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See SMALL CAUSE COURT, MOFUSSIL—
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[5 Mad., 45]

VILLAGE MUNSIF'S PEON.See CRIMINAL PROCEDURE CODES, s. 45
(1872, s. 90) . . I. L. R., 1 Mad., 266**VILLAGE SUTAR (CARPENTER).**

See HEREDITARY OFFICES ACT, s. 4.

[I. L. R., 21 Bom., 733]

VOLUNTARY ASSIGNMENT.

See CASES UNDER INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR.

VOLUNTARY CONVEYANCE.

See CONTRACT ACT, s 25
[I. L. R., 2 All., 881]

See CASES UNDER DEBTOR AND CREDITOR.

See CASES UNDER INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR

See INSOLVENT ACT, s 26
[I. L. R., 3 Cal., 434]

another for value, the conveyance operates as a conveyance of the estate which the settlor had before the voluntary settlement, the Stat. 27 Eliz., c. 4, putting the settlement out of the way, so that it shall not affect the conveyance which is made to the purchaser words showing an intention on the part of the person who made the voluntary gift to convey to the purchaser all the interest or estate that he had are sufficient to avoid such gift. *JUDAN v. ANDOOL KURBEM*, 23 W. R., 60

VOLUNTARY PAYMENT.

See CASES UNDER CONTRACT ACT, ss 69 AND 70.

See CONTRACT ACT, s 72
[I. L. R., 7 Cal., 573]

See CASES UNDER CONTRIBUTION, DEBIT FOR—VOLUNTARY PAYMENTS.

See MONEY PAID AND RECEIVED.
[8 B. L. R., 418
W. R., 1884, 205
8 N. W., 162
8 N. W., 1]

See MONEY PAID . . . 7 N. W., 154
[10 W. R., 400]

See MONEY PAID FOR BENEFIT OF ANOTHER.
[I. L. R., 21 Cal., 142
L. R., 20 I. A., 180]

See MONEY PAID UNDER PROCESS OF DECREE . . . I. L. R., 7 Mad., 586

See CASES UNDER PAYMENT INTO COURT.

See RES JUDICATA—ADJUDICATIONS
[13 B. L. R., 148]

See CASES UNDER SALE FOR ARREARS OF RENT—DEPOSIT TO SATISFY SALE.

See CASES UNDER SALE FOR ARREARS OF REVENUE—DEPOSIT TO SATISFY SALE.

VOLUNTARY PAYMENT—continued

See SALE IN EXECUTION OF DECREE—EXTINGUISHING AND SALE—RIGHTS OF PURCHASERS—RECOVERY OF PURCHASE MONEY . . . 11 B. L. R., 121
[15 B. L. R., 208]

See DEBTOR AND PURCHASER—PURCHASER—MONEY AND OTHER PAYMENTS BY PURCHASER . . . 2 B. L. R., A. C., 80
[11 B. L. R., 121
15 B. L. R., 208
18 W. R., 503
17 W. R., 480
8 B. L. R., Ap., 65]

1. — Money paid, but not due, and paid under compulsion—*Contract Act (IX of 1872), ss. 15, 72*—In execution of a decree, the plaintiff purchased certain property. Subsequently the defendant, in execution of another decree against the former owner of the property, proceeded to execute his decree against the same property. The plaintiff thereupon preferred a claim which was disallowed, as he had not then obtained, and consequently could not produce, the sale-certificate. In order to prevent the sale, he then paid the amount of the defendant's decree into Court, and subsequently instituted a suit against the defendant to recover the amount so paid into Court, to prevent the sale. The defendant contended that the amount was paid voluntarily and could not be recovered back. *Hell, following Dooli Chand v. Ram Kishan Singh I R. 8 I. A., 99 I. L. R., 7 Cal., 645* (that it was not a voluntary payment and that the plaintiff was entitled to a decree. *Fatima Akatoon Choritrai v. Mahomed Jan Choudhry 12 Moore's I. A. 65 10 W. R., P. C., 49*, referred to. *Ahmed v. Ram Prashad Dair, 1 Shome, 25*, doubted. *Jagdeo Narain Singh v. Raja Singh* [I. L. R., 15 Cal., 656]

2. — Money paid under protest—*Right of suit—Contract of indemnity—Contract Act, ss. 124, 125, 126—The Thakor of Indore possessed several talukdars villages in the Ahmedabad District, for which he pays a lump jumma to Government. One of these villages was Akro. Disputes arose between the Thakor and the graminas as to the ownership of the village. The Thakor filed a suit against the graminas, which was ultimately compromised and a consent-decree was passed in 1883 providing (inter alia) that the Thakor should assign to the graminas a moiety of the village; that the graminas should hold the same free from all liability to pay the jumma and that the Thakor should alone be responsible for all Government demands. In accordance with this decree, a moiety of the village was made over to the graminas. The Collector demanded jumma and fee from the Thakor. The Thakor intervened, and objected to the demand, on the ground that he paid a lump jumma for the whole of his taluk, including the moiety of the village assigned to the graminas. Government, however, passed a resolution declaring that half of the village belonged to the graminas; that from them the Government had a right to levy the jumma, that the Thakor was liable, if he*

VOLUNTARY PAYMENT—continued.

chose, pay the same on behalf of the grassias, and that, if it was not paid, it would be recovered by attachment and sale of the grassias' half share. The Thakor thereupon paid the jumma on behalf of the grassias for two years, and then filed a suit against Government to recover back the payments he had made, and for a declaration that Government had no right to levy any assessment on any portion of the village beyond the lump jumma fixed for his talukh. This suit was dismissed on the preliminary ground that the Thakor had no cause of action against Government in respect of any of the reliefs sought, the Court being of opinion that the payments he had made to Government on account of the grassias were voluntary, and that he had no interest whatever in the grassias' half share of the village. *Held*, reversing the decision of the lower Court, that the suit would lie. Under the consent-decree, the Thakor stood in the relation of an insurer to the grassias from all exactions of Government dues. The payments of jumma he made on account of the grassias were therefore not voluntary, but made under protest, and as such were recoverable by suit. **JASVATSINGJI KATESINGJI v. SECRETARY OF STATE FOR INDIA**

[I. L. R., 14 Bom., 299]

3. ———— **Money paid for benefit of another—Contract Act (IX of 1872), ss. 69 and 70—Money paid to protect property from sale in execution of decree for arrears of rent.**—Certain immoveable property was inherited by S, the mother of the plaintiff, from her husband, and during her tenure of it she alienated it by deed of sale to the defendants. S died in April 1890, and the estate then devolved upon the plaintiff, an only daughter (there being no male issue). In 1890 the property in possession of the defendants was, at the suit of a person who was the landlord, ordered to be sold together with other properties of the defendants for arrears of rent, due in the lifetime of S, and to prevent the sale the plaintiff paid the amount of the decree. In a suit for possession of the property and for a refund of the sum paid by the plaintiff to stop the sale, the defendants claimed an absolute interest in the property, but the Courts below found that the alienations by S to the defendants were not made for legal necessity and were therefore invalid. *Held* that the payment made by the plaintiff was not a voluntary payment, but was one which she was entitled to recover from the defendants. It being a question at the time whether the property belonged to the plaintiff or to the defendants, the payment to stop the sale was one in which the plaintiff was interested sufficiently to bring the case within s. 69 of the Contract Act. S. 70 was also applicable, as the payment relieved the defendants from liability to their landlord, and was made for the defendants, and not gratuitously, and the defendants enjoyed the benefit of such payment. The principles laid down in the cases of *Duli Chand v. Ramkishan Singh*, I. L. R., 7 Calc., 648; *I. R.*, 8 I. A., 93; *Smith v. Dinonath Mookerjee*, I. L. R., 12 Calc., 213; and *Jugdeo Narain Singh v. Raja Singh*, I. L. R., 5 Calc., 656, were held to govern this case. **BAMA SUNDARI DAS v. ADHAR CHUNDER SIKHAR**

[I. L. R., 22 Calc., 28]

VOLUNTARY PAYMENT—continued.

4. ———— **Payment made to save the patni talukh from sale—Contract Act (IX of 1872), s. 69—Arrears of rent—Payment made by a mortgagee.**—The plaintiff, who was the mortgagee of a certain patni talukh, obtained a consent decree for Rs. 35,000 on his mortgage-bond on the 13th August 1888. In the solenamah it was stipulated that, if the decretal amount were not paid within a certain date, it was to be increased to Rs. 52,000. On the 14th March 1891 the plaintiff applied for execution of that decree, and claimed the larger amount, as admittedly the smaller amount was not paid within the stipulated period. The Subordinate Judge allowed the plaintiff's claim. The defendant appealed to the High Court, and on the 31st September 1891 the order of the Subordinate Judge was reversed, and an inquiry was directed as to the conduct of the plaintiff in the matter. On the 31st August 1892 the Subordinate Judge held that the plaintiff had been guilty of misconduct, and that the decree had been fully satisfied. The plaintiff appealed from this order to the High Court, and on the 4th January 1894 the appeal was dismissed, and he preferred an appeal to Her Majesty in Council. In the meantime on the 13th May 1892 the plaintiff had paid a certain sum of money to protect the patni talukh from sale for arrears of rent due to the landlord. In a suit brought to recover from the defendant the amount so paid, *Held* that the payment was not a voluntary payment, and that the plaintiff was interested in the payment of the money, and therefore he was entitled to recover it. **BINDUBASHINI DASSI v. HARENDRA LAL ROY**

[I. L. R., 25 Calc., 305
2 C. W. N., 150]

5. ———— **Payment by a purchaser of a patni talukh during the pendency of an appeal for setting aside the patni sale—Person interested in the payment of the patni rent—Patni Regulation (VIII of 1819), s. 14.**—A payment of rent made by the purchaser of a patni talukh after the decision of the first Court in a suit brought by the defaulting patnidars for the setting aside of the patni sale, by which it was held that the sale was invalid, and during the pendency of an appeal preferred, not by the plaintiff, the auction-purchaser, but by the zamindar at whose instance the said sale had been brought about, is not a voluntary payment, inasmuch as he (the plaintiff) is a person interested in the payment of the money, within the meaning of s. 69 of the Contract Act. *Bindubashini Dassi v. Harendra Lal Roy*, I. L. R., 25 Calc., 305, followed. The remedy which the plaintiff in this case had, after the reversal of the sale, to be re-imbursed by the defendant under s. 69 of the Contract Act was held not to be curtailed by the provisions of s. 14 of Regulation VIII of 1819. **RADHA MADHUB SAMONTA v. SASTI RAM SEN** . I. L. R., 26 Calc., 826

6. ———— **Payment of decree for rent by purchaser at sale for arrears of rent—Contract Act (IX of 1872), ss. 69, 70—Suit to recover money so due.**—Rent is by operation of law the first charge on a tenure, and a person who purchases the same at any execution-sale must, in the absence of anything to denote the contrary, be taken to

VOLUNTARY PAYMENT—concluded.

purchase it, charged with the rent which is due in respect of it at the time of its purchase, and there being no privity between him and the judgment-debtor, he cannot recover from the latter the money which he is obliged to pay for the rent so due at the time of the purchase. So where a plaintiff, in execution of a mortgage-deed, purchased the tenure mortgaged, and then paid the money due under a decree obtained by the landlord against the tenant-holder for arrears of rent for the period anterior to

VOLUNTARY SETTLEMENT

See OATH OF PROOF—DECREES AND DEEDS,
SUITS TO ENFORCE OR SET ASIDE
[I. L. R., 15 Bom., 549]

Breach of Covenants in—

See DAMAGES—SUITS FOR DAMAGES—
BREACH OF CONTRACT
[I. L. R., 2 Bom., 273]

VOLUNTEERS

See ARMY ACT s 19
[I. L. R., 22 All., 323]

VOTERS, LIST OF—

See CALCUTTA MUNICIPAL CONSOLIDATION
ACT, s 31 I. L. R., 22 Calc., 717

W**WAGERING CONTRACT**

See CASES UNDER CONTRACT—WAGERING
CONTRACTS

See FIDELITY—PAROL FIDELITY—VARY-
ING OR CONTRADICTORY WRITTEN IN-
STRUMENTS I. L. R., 8 Calc., 791
[I. L. R., 13 Bom., 585
I. L. R., 17 Mad., 480]

WAGES.

See ATTACHMENT—SUBJECTS OF ATTACH-
MENT—WAGES I. L. R., 8 N., 15
[I. L. R., 5 Bom., 153]

See CASES UNDER MASTER AND SERVANT
of labourers.

See REVENUE ACT VI of 1865.
[3 B. L. R., A. Cr., 29]

WAGES—concluded

—Suits for—

See SMALL CAUSE COURT, MORTGAGE—
JURISDICTION—WAGES

[8 B. L. R., Ap., 91]

See SMALL CAUSE COURT HANCOCK,
[I. L. R., 10 Calc., 878]

WAGING WAR.

See JURISDICTION OF CRIMINAL COURT—
OFFENCES COMMITTED ONLY PARTLY IN
ONE DISTRICT—ARTICLE OF WAGING
WAR O. B. L. R., Ap., 39

See SENTENCE—TRANSPORTATION
[3 W. R., Cr., 18]

WAGING WAR AGAINST THE QUEEN.

—Conspiracy to wage war—Trea-
son—Usurpation of treason—Limitation of period
for prosecution—Penal Code s 121-7 Will III,
c 3, s 5—The offence of engaging in a conspiracy to
wage war, and that of abetting the waging of war,
against the Queen under s 121 of the Penal Code
are offences under the Penal Code only, and are not
treason or misprison of treason; and therefore the
provisions of the Stat 7 Will III, c 1 s 5
as to placing a limitation on the period for prosecu-
tion are not applicable QUEEN & AMIRREDDIN
[7 B. L. R., 63 15 W. R., Cr., 25]

WAIVER.

See CASES UNDER ACQUISITION.

See ARBITRATION—AWARDS—VALIDITY
OF AWARDS AND GROUNDS FOR SETTING
THEM ASIDE I. L. R., 21 Calc., 590

See CASES UNDER BOND

See STOPPAGE—STOPPAGE BY CONTRACT
• 7 Mad., 203
[8 Mad., 14
I. L. R., 18 Calc., 341
I. L. R., 15 Mad., 82
I. L. R., 14 Bom., 558]

See FOREIGN COURT, JUDGMENT OF
[I. L. R., 2 Mad., 400, 407
I. L. R., 15 Mad., 83]

See GUARDIAN—DUTIES AND POWERS OF
GUARDIANS I. L. R., 18 Calc., 89
[I. L. R., 17 A., 90]

See INSURANCE—LIFE INSURANCE
[I. L. R., 23 Calc., 320]

See CASES UNDER LIMITATION ACT, 1877,
ART 75.

See CASES UNDER LIMITATION ACT, 1877,
ART 179—ORDER FOR PAYMENT AT SPEC-
IFIED DATES

See VALUABLE LAW—NOTES
[I. L. R., 15 Mad., 400
I. L. R., 15 Mad., 480]

WAIVER—continued

of the rent in kind **NARAY GEER v. GOER SRAW**
Doss 23 W. R., 388

25 ——— **Withdrawal of objection to sale in execution of decree—Effect of, on subsequent right to sue to set it aside**—The plaintiff purchased certain property from the first and second defendants. The property was subsequently put up for sale by order of the Civil Court in execution of a decree against the first and second defendants and

consent before the sale. In a suit by the plaintiff for the recovery of the land —*Held* that the plaintiff was

26 ——— **Relinquishment by Hindu widow—Relinquishment of title to property by widow—Petition**—A mere petition by a widow to the effect that she has relinquished her title in certain property in favour of parties suing the lessees of the property for possession is not a legal relinquishment of her share therein **OMMA CHURU KOOVDOO v. BROODER MONEN PAL** 10 W. R., 88

27. ——— **Agent's right to execute decrees obtained by him as agent—Civil Procedure Code 1882, s. 87—Recognized agent—Execution of decree**—P filed a suit in the second class Subordinate Judge's Court at Madras. As P resided at Tirunelveli outside the jurisdiction of the Court of Madras, she authorized her agent, under a general

decree. The Court of Madras passed an order upon

appeal was dismissed. *Held* that the agent could not be prevented from executing the decree which he had obtained as agent. No objection had been taken to the agent's right to represent P at any stage of the litigation prior to the final decree. That objection must therefore be deemed to have been virtually

28. ——— **Remission of part performance of contract—Sum accepted on account of interest**—A hypothecation bond provided for payment of interest on the principal sum at the rate of 9 per cent. and contained a further provision that, on default being made in payment of interest accruing due, interest should be paid from the date of the

WAIVER—continued.

bond at the rate of 15 per cent. Default was made when the first and second payments of interest became due. After the second payment had become due, the creditor accepted payment on account of interest of a sum, a title more than the arrears calculated at 9 per cent. In a suit by the creditor, —*Held* that the plaintiff had not waived any right under the bond by accepting the payment on account of interest. **NANJAPPA v. NANJAPPA**

(L. L. R., 12 Mad., 10)

29 ——— **Decree payable by instalments—Execution of decree—Default—Limitation**—A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years and it was provided that, on default the decree holder might execute the decree as a whole for the balance then due. In 1887 default was made, and in 1884 the decree-holder filed an application for execution in respect thereof but did not proceed with it and continued to receive the monthly instalments. In 1887 he made an application

Calc., 48, distinguished **FREDERICK LAL v. LYKKNAR DAS** 11 L. R., 11 All., 485

30 ——— **Decree payable by instalments and in default execution for whole amount to issue—Default in payment of instalments—Waiver by plaintiff of right to execute decree—Receipt by plaintiff of overdue instalments**—By a consent decree passed in a mortgage suit the defendant was ordered to pay to the plaintiff the sum of Rs 500 by yearly instalments of Rs 50 payable on 30th April in each year, and in case of default in payment of any instalment the plaintiff was to be at liberty to execute the decree by sale of the mortgaged property. The defendant failed to pay the first instalment, which fell due on the 30th April 1889 and the plaintiff applied for execution and obtained an order for the sale of the property. In order to prevent the sale, the defendants on the 13th November 1889, paid Rs 50 out of Court, and the application for execution thereupon was allowed to drop. The defendants subsequently made the

after the summer vacation, which had begun on the 30th April 1890. On the 6th June 1890 the plaintiff again applied for execution of the decree, which was granted by the Subordinate Judge. On appeal the District Judge reversed the order, holding that the plaintiff by accepting the above payments had waived his right to execute the decree. On appeal to the High Court, —*Held* that the plaintiff was entitled to execution. The acceptance of the payments did not prove a waiver. They were not accepted on account of the specific instalments in arrears, but on account of the whole decree, and

WAIVER—concluded.

even if they were taken as payments of overdue instalments, they could not by themselves prove a waiver. *BATAJI GANESH v. SAKHARAM PARASHIRAM*. I. L. R., 17 Bom., 555

31. ——— Omission to take objection that pottahs and muchalkas had not been exchanged before suit—*Suit to recover customary dues payable on account of a chattram.*—In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants raised no objection on the ground that there had been no exchange of pottahs and muchalkas, but among other defences they relied upon a plea of limitation. *Held* (1) that the defendants should be considered to have admitted tacitly that the exchange of pottahs and muchalkas has been dispensed with. *VENKATAYARAGA v. DISTRICT BOARD OF TANJORE* [I. L. R., 16 Mad., 305]

WAJIB-UL-URZ.

See *COLLECTOR*. I. L. R., 15 All., 410

See *EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—WAJIB-UL-URZ.*
[I. L. R., 2 All., 876
I. L. R., 15 All., 147]

See *MAHOMEDAN LAW—PRE-EMPTION—CEREMONIES*. I. L. R., 9 All., 513

See *MAHOMEDAN LAW—PRE-EMPTION—MISCELLANEOUS CASES.*
[I. L. R., 12 All., 234]

See *MAHOMEDAN LAW—PRE-EMPTION—PRE-EMPTION AS TO PORTION OF PROPERTY*. I. L. R., 10 All., 182
[I. L. R., 11 All., 108
I. L. R., 21 All., 119]

See *MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.*
[I. L. R., 9 All., 480
I. L. R., 10 All., 472]

See *MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—WAIVER OF RIGHT OR REFUSAL TO PURCHASE.*
[I. L. R., 11 All., 108]

See *CASES UNDER PRE-EMPTION.*

See *WASTE LANDS* I. L. R., 19 All., 172

————— Testamentary bequest contained in—

See *HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED*. I. L. R., 19 All., 16

WAQF.

See *ACT XX OF 1863, s. 18.*

[15 B. L. R., 167
I. L. R., 3 Calc., 324]

See *CASES UNDER MAHOMEDAN LAW—ENDOWMENT.*

WARRANT.

See *INSOLVENT ACT, s. 50.*

[I. L. R., 17 Calc., 209]

————— Arrest or search without—

See *ESCAPE FROM CUSTODY.*

[24 W. R., Cr., 45]

I. L. R., 19 Mad., 310.

See *OPIUM ACT, s. 9.*

[I. L. R., 24 Calc., 691]

See *PRIVATE DEFENCE, RIGHT OF.*

[7 Bom., Cr., 50]

I. L. R., 19 Mad., 349.

————— Service of—

See *PENAL CODE, s. 186.*

[I. L. R., 22 Calc., 596, 759]

I. L. R., 23 Calc., 896.

I. L. R., 24 Calc., 320.

1. ——— Warrants made by Lieutenant-Governor of Bengal—*Seal of Court.*—The Court will order its seal to be impressed on any warrant made by the authority of the Lieutenant-Governor of Bengal, even if not actually signed by him. *ANONYMOUS*. 1 Ind. Jur., N. S., 106.

2. ——— Search warrant—*Criminal Procedure Code, 1861, ss. 114, 115—Requisites of warrant.*—It is essential to the legality of a search warrant, under s. 114 of the Code of Criminal Procedure, that the production of some specified and particular thing is desired; that the Magistrate alone shall determine that such production is necessary; and that a specified house or place only is to be searched. The warrant must, under s. 115 of that Code, be directed to some other person only when a police officer is not forthcoming. *QUEEN v. HOSAIN ALI CHOWDHRY*. 8 W. R., Cr., 74.

3. ——— *Criminal Procedure Code, s. 96—Magistrate, Jurisdiction of.*—The accused was charged with the offence of criminal misappropriation of treasure belonging to a temple of which he was alleged to be the trustee. From the complaint, it appeared that some of the treasure belonging to the temple had been buried under a flagstaff in the temple, and the Magistrate was of opinion that the nature of the property so buried had an important and material bearing on the case for the prosecution. *Held* the Magistrate had jurisdiction to issue a warrant to search for and produce such property upon information which he considered credible, since there was a complaint before him duly affirmed as prescribed by the Criminal Procedure Code; and that it was not incumbent on him to wait until the evidence for the prosecution should have been recorded in the presence of the accused. *QUEEN-EMPRESS v. MAHANT OF TIRUPATI* [I. L. R., 13 Mad., 18.]

4. ——— *Criminal Procedure Code (Act X of 1852), s. 96—Issue of search warrant in the absence of any inquiry, trial, or other proceeding pending before Magistrate.*—Some treasure belonging to the Native State of Radhanpur was missing. The Administrator of

WARRANT—concluded

Radhanpur sent a telegram to the District Superintendent of Police at Ahmedabad, stating that part of the missing treasure was in the possession of the accused, who was a resident of Ahmedabad, and asking that this house should be searched. In consequence of his telegram, the City Police Inspector applied for a search-warrant to the City Magistrate of Ahmedabad. Thereupon the Magistrate issued a search-warrant under s. 20 of the Code of Criminal Procedure. In execution of this warrant, the house of the accused was searched and the police seized and took away certain property belonging to the accused, to his wife, and to his servant. The accused was subsequently arrested under a warrant issued by the Political Superintendent of Palanpur under s. 11 of the Extradition Act (XVI of 1871), but he was admitted to bail by the District Magistrate of Ahmedabad on the 12th June 1907 the District Magistrate passed

property should be restored to the persons from whose possession it was taken. The District Magistrate subsequently reversed this order as being erroneous, and passed a fresh order on the 3rd August 1907, directing the property to be delivered up to the Political Superintendent of Palanpur. Held that the City Magistrate had no authority to issue a search

warrant or other Magistrate's order in relation to the articles seized was necessary or desirable. Held also that the search warrant being illegal and *ultra vires*, the subsequent orders relating to the detention and delivery of the property seized were also illegal and unjustifiable. *IN RE HABIBUL HOSEIN* (I L. R., 22 Bom., 949)

WARRANT-CASE

See PANDANASHI WOMEN

(I L. R., 21 Calc., 588)

WARRANT OF ARREST

Col.

1 CIVIL CASES 9150

2 CRIMINAL CASES 9153

See ASSAULT ON PUBLIC SERVANT

(I L. R., 28 Calc., 630)

See JURISDICTION OF CRIMINAL COURT—
GENERAL JURISDICTION

(I L. R., 25 Calc., 20)

L. R., 24 L. A., 137

See MALICIOUS PROSECUTION

(I L. R., 10 Bom., 465)

WARRANT OF ARREST—continued

See PENAL CODE, s. 332

(I L. R., 18 All., 246)

See WITNESS—CIVIL CASES—DEFACING WITNESSES 9154

(O W. R., 359)

5 Mad., 104

I L. R., 17 All., 277

See WHOLESALE CONFINEMENT

(I L. R., 10 Bom., 72)

Execution of—

See WITNESS—CRIMINAL CASES—COMMOVING WITNESSES

(I L. R., 21 Calc., 320)

Illegal issue of—

See PENAL CODE s. 181

(I L. R., 21 Calc., 320)

not in legal form

See PENAL CODE s. 181

(I L. R., 23 Calc., 896)

See PENAL CODE, s. 332

(I L. R., 18 All., 246)

of Governor General in Council

See BENGAL REGULATION III of 1818

(8 B. L. R., 303, 459)

8 B. L. R., 30

See HABEAS CORPUS

(8 B. L. R., 303, 459)

I CIVIL CASES

1. Absence of warrant—*Discharge from custody of Sheriff*—The Court will discharge a prisoner from custody when the jailor holds no warrant for his detention, although he has been properly in the custody of the sheriff. *IN THE MATTER OF SHAN DAVIS* 1 Ind. Jur., N. S., 18

2. Informality of warrant—*Application for discharge—Civil Procedure Code, 1859, s. 273—Delay in bringing up prisoner—It is and several other prisoners in the custody of the Sheriff of Calcutta for debt, without having been brought up to have an order for their allowance made, on being produced for that purpose by the Sheriff, applied for their discharge under s. 273 of Act VIII of 1859. Preliminary objections were taken to the validity of the warrants on which the Sheriff arrested them, on the grounds that the time for execution was not specified in them; and that, even had they been originally valid, their authority had expired, owing to the delay in bringing up the prisoners. Both objections were overruled. Held that a mere informality in a warrant, such as the omission of the time for execution, only renders it irregular, and does not invalidate it, that advantage having been taken of such irregularity to prejudice the prisoner, affords grounds for an application to the Court to set the warrant aside; and that a mere delay in bringing the prisoner before the Court after his arrest, if not for a*

WARRANT OF ARREST—*continued.*1. CIVIL CASES—*continued.*

considerable period, does not render his detention illegal. *IN RE BROLANAATH MULLICK*

[*Bourke, O. C., 96*

3. ———— *Form of warrant—Sufficiency of warrant.*—Where a person had been taken in execution under a *ca. sa.* directed to the Sheriff under the old procedure, it was held to be sufficient to empower the jailor to detain him. The words "ordinary civil jurisdiction" are only used to distinguish the civil from the criminal jurisdiction. *IN RE ANWAR BISWAS* . . . 1 Ind. Jur., N. S., 108

4. ———— *Writ of Calcutta Small Cause Court, Form of—Act XII of 1865—Fixing subsistence-money.*—A writ of the Calcutta Small Cause Court commanding its "Bailiff to take the body of *A*, and have him before the Court on the — day of — to satisfy *B* in the sum of — debt and costs, ordered and decreed by the said Court on the — day of — to be paid to the said *B* with costs of execution, and by virtue thereof to take and convey the said *A* to the common jail of the said Court, there to be detained in safe custody for — weeks, or until he shall sooner perform the said order of the Court" is in point of form a sufficient warrant to the jailor to receive and detain *A*, notwithstanding Act XII of 1865. It was not necessary, in the case of commitment of a debtor to prison by the Calcutta Court of Small Causes, to bring him in the first instance before the Court, as under the provision of Act VIII of 1859, in order to have his subsistence-money fixed. *IN THE MATTER OF MEER NAWAUB*

[1 Ind. Jur., N. S., 315

5. ———— *Warrant directed to Nazir—Arrest of judgment-debtor—Indorsement to peon—Civil Procedure Code, 1882, s. 343—Indorsement of particulars of arrest by Naib Nazir.*—Where a warrant issued by a Subordinate Court, directing the Nazir to arrest a judgment-debtor in execution of a decree, was entrusted by the Nazir to a subordinate for execution by indorsing his name upon it,—*Held* that there is nothing in the Civil Procedure Code to prohibit a Nazir from authorizing a deputy to execute a warrant of arrest for him, and that his indorsement must be regarded as *prima facie* evidence of the authority of the person to whom the warrant is delivered to execute it. *Held* also that it is most desirable, when the Nazirs of the Subordinate Courts delegate the duty of executing warrants of arrest, that they should confer the authority in more clear and explicit terms than are expressed by a mere indorsement, and that they should be careful in selecting proper persons to discharge that duty, bearing in mind, as far as circumstances permit, the position and caste of the party to be arrested, so as to avoid, through the medium of Court process, subjecting any such party to personal indignity or offence. *Held* further that it is important that the person chosen should be made acquainted with the contents of the warrant in order that he may be able to inform the judgment-debtor at whose suit and for what amount he is being taken into custody. Where a warrant for the arrest of the judgment-debtor had been executed,

WARRANT OF ARREST—*continued.*1. CIVIL CASES—*continued.*

and an indorsement thereon, professedly under s. 343 of the Civil Procedure Code, was irregularly made by the Naib Nazir, he not having been "the officer entrusted with the execution of the warrant,"—*Held*, that such irregularity did not invalidate the arrest. *ABDUL KAHIM v. BULLEN* . . . I. L. R., 6 All., 385

6. ———— *Irregularity in warrant—Warrant of arrest in execution of a decree only initialled by proper officer—Civil Procedure Code, 1882, ss. 2, 251.*—A warrant issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and, was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. *Held* that this contention could not be allowed, and although it was proper that the person signing a warrant should write his name in full, it could not be said that because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. *QUEEN-EMPRESS v. JANKI PRASAD* . . . I. L. R., 8 All., 293

7. ———— *Validity of warrant—Liability of Nazir—Escape of judgment-debtor.*—The plaintiff sued out a warrant for the arrest of his judgment-debtor on the 4th December 1876. The warrant was lodged with the Nazir on the 16th December and was to be in force till the 4th January 1877. On the 22nd December 1876 the Nazir was informed that the judgment-debtor was already in the civil jail under a writ of execution issued by another creditor. The Nazir then returned the warrant to the Subordinate Judge who had issued it. On the 29th December the Subordinate Judge again sent it to the Nazir's office, where it was duly received by the Nazir's karkun (defendant No. 2). This fact was not reported by the karkun to the Nazir (defendant No. 1) until the 4th January 1877. On the 1st January 1877 the judgment-debtor's debt was paid by Government, and he was released in honour of Her Majesty's assumption of the title of Empress of India. The judgment-debtor thereupon left the district and could not be found, and the plaintiff's warrant remained unexecuted. The plaintiff sued the Nazir and his karkun for allowing his judgment-debtor to escape. *Held* that the Nazir ought not to have sent the warrant back to the Subordinate Judge, and that there was no necessity for a fresh order on it until the time for which it had to run had expired. *Held* also that, according to Act VIII of 1859, as it stood at the end of 1876 and until October 1877, the batta for the maintenance of a debtor could not become payable until he was arrested and brought before the Court

WARRANT OF ARREST—continued

1. CIVIL CASES—concluded.

and the latter made the order for his commitment to the civil jail. **KASTURCHAND v. RAJIV SADASHIV**

[I. L. R., 4 Bom., 85]

8. — Warrant not exhausted if on one occasion the serving officer is unable

applications for execution, applied on the 4th of August 1897 for a warrant for the arrest of the judgment-debtor. That application was granted, but the process sent to arrest the judgment debtor reported that he had concealed himself, and the Court in consequence struck off the application for execution. On the 24th of November 1897 the decree-holder again applied for the arrest of the judgment debtor, but that application also was struck off without the arrest having been made.

executed, having regard to a. 200 of the Code of Civil Procedure, it was held that the warrant of arrest issued on the decree-holder's application of the 4th of August 1897 still subsisted and ought to be executed. **Amar Ali Khan v. Pasi Chand**, Weekly Notes, All., 1898, 187, followed. **Jir Maz v. Jwala Prasad** [I. L. R., 31 All., 155]

2. CRIMINAL CASES

9. — Arrest in pending case—*Power of Magistrate—Criminal Procedure Code, 1861, s. 68*—s. 69 of the Code of Criminal Procedure

10. — Warrant on non-appearance to summons—*Issue of tolls—Disobedience of summons to appear—Undertaking not to sue—A*, the lessee of a toll, was in arrears to Government in respect of the rent. The Magistrate issued a summons to him, whereby it was recited that a plaint had been preferred against him (A) for not paying the sum of Rs. 120 for arrears of rent, and A was summoned to appear before the Magistrate to answer the charge. A did not appear on the day appointed, but had an application presented for postponement of the demand for arrears of rent, on the grounds therein stated. On the following day the Magistrate passed the following order: "Whereas the debtor, defendant, has not appeared in person, the summons has not been obeyed; therefore it is ordered that

under taking not to take legal proceedings for anything done under the order or warrant. **In the Matter of HANNA BHANT GHOSH**

[2 B. L. R., A. Cr. 17; 11 W. R., Cr., 20]

WARRANT OF ARREST—continued

2. CRIMINAL CASES—continued.

11. — Issue of warrant—*Complaint on oath—Report of police officer—Criminal Procedure Code, 1861, ss. 68 and 155*—In cases in which the police cannot arrest without a warrant, a warrant cannot legally be issued by a Magistrate except on a complaint made on oath (or under s. 69 of the Criminal Procedure Code), whether such Magistrate is authorized to entertain cases either on complaint directly to himself or on the report of a police officer. **REG v. JAPAR ALI** 8 Bom. Cr., 113

12. — Arrest on report of policeman for offence for which arrest without warrant might be made—Where a policeman in whose sight a theft was committed arrested the thief, and being himself unable to take or send the accused to a Magistrate, sent a report, on which the Magistrate issued a warrant.—Held that, under these circumstances the accused was legally brought before the Magistrate. **REG v. MAHIRA TALAB HOMYA MAHAR** 5 Bom. Cr., 90

13. — Validity of warrant—*Criminal Procedure Code (A of 1872), s. 157—Magistrate out of jurisdiction—Extradition*—It was not essential to the validity of a warrant issued under a. 157 of Act 1 of 1872 that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction. He might issue such a warrant from a place in foreign territory. **REG v. LOCHA KALA** [I. L. R., 1 Bom., 340]

14. — Procedure on warrant—*Act 111 of 1867*—When a prisoner was arrested by the sheriff under a writ of ca. sa., it was necessary to bring him before the Court without delay, under a. 14 of Act XII of 1867. **In re HANCOCK** Derr 3 Ind. Jur., N. S., 310

15. — Operation of warrant—*Detention of prisoner*—The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate. **MUTHOORA NATH CHETTIAR v. HERRA LALL DOS** 17 W. R., Cr., 55

A Magistrate therefore is not at liberty to retain an accused person in custody, except upon a proper remand made after taking sufficient evidence given on oath or solemn affirmation. **In the Matter of ZENEBEDDEEN HOSSEIN** 25 W. R., Cr., 8

16. — Warrant issued to unofficial person—*Criminal Procedure Code (Act 1 of 1872), s. 161—Act XXI of 1861, s. 77*—Under a. 77 of the Criminal Procedure Code, a Magistrate ought not to issue a warrant in an unofficial person, except when he is without the assistance of competent police officers and unless the urgency is imminent. The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate, and the prisoner cannot lawfully be committed to prison or remanded without sufficient grounds, and in the absence of evidence there can be no grounds. **In the Matter of the PRISONER OF DRAHITONATH KOT QURESH v. SCHNEIDERMAN FOR**

[5 B. L. R., 274; 13 W. R., Cr., 27]

WARRANT OF ARREST—continued.**2. CRIMINAL CASES—continued.**

17. ————— *Criminal Procedure Code (Act XXV of 1861), s. 68—Act X of 1872, ss. 142 and 150—Detention of accused.*—A warrant issued under s. 68, which was a warrant of arrest as described under s. 76 (Form B), is only for the purpose of bringing an accused person before the Magistrate. It was not a warrant for commitment, and did not authorize the detention of a person longer than is necessary for his production before the Magistrate. To detain him further, there must be a fresh warrant under s. 222, charging the prisoner with some offence, on evidence taken on oath or affirmation, and in the presence of the accused. *IN THE MATTER OF MAHESH CHANDRA BANERJEE. QUEEN v. PURNA CHANDRA BANERJEE. QUEEN v. KALI SIKAR*

[4 B. L. R., Ap., 1: 13 W. R., Cr., 1

18. ————— *Detention of accused—Order sanctioning detention for indefinite period—Remand of accused.*—Held that the order of a Magistrate sanctioning the detention by the police of an accused person for an indefinite period is illegal. At the expiration of twenty-four hours from the time of arrest, the accused must be brought before a Magistrate, who could then remand for a period not exceeding fifteen days under s. 224 of the Criminal Procedure Code, 1861. No remand without a hearing can last for a longer period. *REG. v. SURKYA VALAD DHAKU*

5 Bom., Cr., 31

19. ————— *Form of warrant—Omission to seal warrant—Criminal Procedure Code, 1869, s. 76—Requisites of good warrant.*—A warrant issued under s. 76 of the Code of Criminal Procedure should be stated, should describe the person to be apprehended under it with reasonable particularity, so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a warrant was defective in all the above particulars, the prisoner apprehended under it was released by the High Court. *IN RE HASTINGS*

9 Bom., 154

20. ————— *Form of endorsement on warrant.*—An endorsement on a warrant under s. 79 of the Code of Criminal Procedure, should be regularly made by name to a certain person in order to authorize him to make the arrest. *DURGA TEWARI v. RAHMAN BUKSH*

4 C. W. N., 85

21. ————— *Act XIII of 1856, s. 58—Error in warrant not affecting conviction.*—A warrant issued under s. 58 of Act XIII of 1856 should be addressed to some one or more inspectors, and not generally to "all constables and peace officers." Where a warrant in the latter form was executed under the direction of an inspector, it was held that the error in the form of the warrant was merely an error of procedure, and did not affect the validity of the conviction, under s. 57, of persons apprehended in pursuance of the warrant so executed. *REG. v. NANA MOROJI. IN RE MADHAV MORAR*

[8 Bom., Cr., 1

22. ————— *Warrant not containing specification of offence.*—A warrant which

WARRANT OF ARREST—continued.**2. CRIMINAL CASES—continued.**

did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed. *IN RE BIDHMOOKHI DEBI*

6 B. L. R., Ap., 129

S. C. BIDHMOOKHRE DABEE v. SREENATH HALDAR

15 W. R., Cr., 4

23. ————— *Informality in warrant—Criminal Procedure Code, 1869, s. 404—Power of High Court—Irregularity in process of arrest and attachment.*—The High Court was not empowered to interfere under the provisions of s. 404 of the Criminal Procedure Code, 1869, until there has been a judicial proceeding by a Magistrate. A person complaining of irregularity of process issued for his arrest and for the attachment of his property, before applying to the High Court under s. 404 of the Criminal Procedure Code, should make application to the Magistrate issuing such process for his discharge and the release of his property, on the ground of the informality of the warrants. *QUEEN v. BISHESHUR PERSHAD*

[2 N. W., 441: Agra, F. B., Ed. 1874, 236

24. ————— *Mode of arrest in foreign territory or out of jurisdiction—Warrant of arrest for contempt of Court.*—The High Court of Bombay will not send a special bailiff into the territories of the Gaikwar of Baroda to arrest a defendant who has been guilty of a contempt of Court, but the Court will send a special bailiff for such purpose beyond the local limits of the High Court to a place within the Presidency of Bombay. *HARIVALLABHDAS KULLIANDAS v. UTAMOHAND MANIKOHAND*

[7 Bom., O. C., 172

25. ————— *Warrant to arrest and imprison—Form of warrant—Service of warrant—Irregularity—Defect in warrant—Foreigners, Arrest of—Act III of 1864, s. 3—Criminal Procedure Code, s. 491.*—On the 3rd July 1894, certain foreigners, resident in Bombay, having been arrested by the police and sent to jail under warrant issued under ss. 3 and 4 of Act III of 1864, they applied to the High Court and obtained a rule nisi under s. 491 of the Criminal Procedure Code (Act X of 1882) and under Stat. 31 Car. II, c. 2 (Habeas Corpus Act), calling on the Superintendent of the Jail to show cause why they should not be set at liberty. A separate warrant was issued in the case of each of the foreigners in question; and all were in the same form. The warrant directed the person whose name appeared in it forthwith to "remove himself from British India by sea, and it further contained the following words: "All officers to whom this order may be communicated are required to see that it is duly obeyed, and, in the event of its being infringed, to apprehend and detain the said () in safe custody in the jail of Bombay under s. 4 of the said Act, until he shall be lawfully discharged therefrom." Each warrant was signed by the Secretary to Government, and was directed to the Commissioner of Police and to the Superintendent of the Jail. Held that the warrants were not valid warrants for the following

WARRANT OF ARREST—concluded**2 CRIMINAL CASES—concluded.**

reasons: (1) they were irregular in that they contained an order to the person named in them to do a certain thing with a further conditional order for his imprisonment in the event of his not doing it. There ought to have been a separate order to each prisoner to remove himself from British India, which order should have been duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there ought to have been a further order by the Governor in Council authorizing his arrest and detention in jail. (2) The persons named in them were not indicated with sufficient clarity and particularity. The warrants contained no description of the persons against whom they purported to be directed, and did not give their place of residence. (3) By reason of the direction contained in them that the persons named in them were to remove themselves from British India by sea to the places mentioned in the warrant. The particular route to be specified under s 3 of Act III of 1861 is intended to be a route in British India, and not a route beyond the high seas. The Government has no jurisdiction to direct a person's movements at sea beyond the limits of three miles from the shore. (4) *Per BYRANING, J.*—The warrants were also defective, inasmuch as they bore no seal. *ALTER CAUFMAN v. GOVERNMENT OF BOMBAY*

[L. L. R., 18 Bom., 636]

28.

Warrants issued under Act XIII of 1859—Execution outside jurisdiction—Criminal Procedure Code (1892), s. 83—Magistrate, Jurisdiction of—Breach of contract of service—S. 83 of the Criminal Procedure Code applies to warrants issued under s 1 of Act XIII of 1859, and consequently such warrants may be executed outside the local jurisdiction of the Magistrate issuing them. QUEEN-EMPRESS v. KATTAYAT

[L. L. R., 20 Mad., 235]

QUEEN-EMPRESS v. MUTHAYYA

[L. L. R., 20 Mad., 457]

GAURI SHANKAR v. MATA PRASAD

[L. L. R., 20 All., 124]

WARRANT OF ATTORNEY.

1. — Extent and operation of warrant—*Civil Procedure Code, 1859, ss. 17 and 47—Acceptance of service and appearance—Act XX of 1862, s. 7.*—A warrant of attorney to the attorney of a defendant to receive a declaration or plaint, etc., in any action or suit to be brought for the recovery of certain moneys, and to confess the same action or suit, or else to suffer or consent to a judgment or decree in the said action or suit by default, or in any other way to pass or be pronounced against the defendant, empowered the attorney to accept service and appear for the defendant within the meaning of ss. 17 and 47 of Act VIII of 1859. *Held* that a F of Act XX of 1862 referred only to warrants of attorney for the entering up of judgments in the High Court which were in existence

WARRANT OF ATTORNEY—concluded.

before the 1st July 1912. *KHALET CHUTTER GHOSH v. SARADASOOTRERY DOSSET*

[Bourke, O. C., 244]

2. — Limitation Act, 1859—*Fa-ta-ling assignment.*—The statute of limitation is no answer to a rule nisi to enter up judgment on a warrant of attorney. *SOOJAN MEEL v. HIRDER JENKA BAHADUR*

1 Ind. Jur., O. S., 58

WARRANT OF COMMITMENT

Signature of Magistrate—*Criminal Procedure Code 1872, s. 303*—The signature of a Magistrate to a warrant of commitment under s. 303 of the Code of Criminal Procedure, 1872, should not be affixed by a stamp. *SRINAWATY v. QUREN*

L. L. R., 6 Mad., 398

WARRANT OF EXECUTION.

1. — Executing a warrant for attachment of property—*Penal Code (Act XLV of 1860), ss. 333, 334, 335—Assaulting a public servant in the discharge of his duty—Contents of the warrant—Form of the warrant—Non-production of evidence as to terms of warrant—Validity of warrant, and of conviction had upon it.*—A warrant for the attachment of whatever property of a judgment debtor which the officer executing it might find or search, which did not describe the area of the search and was different from the form prescribed by the Code of Civil Procedure, Act II, No 135 was not a valid warrant. In the absence of any evidence as to the terms of the warrant either by the production of the original or in the form of secondary evidence a conviction for resisting or obstructing a public officer in the discharge of his duty, viz., the execution of a distress-warrant for attachment of property, cannot stand. *CHANDER COOMAR SEN v. QUEEN-EMPRESS*

[L. L. R., 20 Calc., 630]

2. — Extension of time for operation of warrant—*Act I of 1859, s. 69—Jurisdiction.*—Where a warrant of execution under Act I of 1859, s. 69, was extended for four days after a particular day, when the original warrant was not sixty days old in order that more movable property might be pointed out, *Held* that, until the time so extended had elapsed, an order for sale of immovable property was without jurisdiction. *HARI DAX v. DIDAR DAX KHAN*

[3 R. L. R., A. C., 10; 11 W. R., 326]

3. — Return of warrant—*Police servant—Resistance to public servant—Penal Code, s. 383—Civil Procedure Code 1859, s. 251.*—A person was convicted under s. 383 of the Penal Code for offering resistance to the attachment of property by a public servant. The offence was committed on the 4th of February 1853, but the warrant under which the public servant acted was returnable on or before the previous day. *Held* that the conviction was bad. *IN THE MATTER OF*

WARRANT OF EXECUTION—concluded.

THE PETITION OF ANAND LALL BERA. ANAND LALL BERA *v.* EMPRESS

[I. L. R., 10 Calc., 18: 13 C. L. R., 209

4. ——— Irregularity in warrant—*Civil Procedure Code, 1859, s. 222—Civil Procedure Code, 1877, 1882, s. 251.*—An execution-sale of the right, title, and interest in land was set aside by the Court, on the ground that the warrant for the execution of the decree and order of attachment of the property sold had not been signed by the Judge, but by the Munsarim of the Court; and at a second sale the property was sold to other purchasers, who, as well as the judgment-debtor, were sued by the purchaser at the first sale for a declaration of his right to have the first sale confirmed. The High Court having held that, with reference to s. 222 of Act VIII of 1859, the first sale had been rightly set aside, an appeal to the Judicial Committee was dismissed with costs. RAM DAYAL *v.* MAHTAB SINGH I. L. R., 7 All., 506

WARRANTY, BREACH OF—

See CHARTER PARTY . 8 B. L. R., 544

See CONTRACT—BREACH OF CONTRACT.

[14 B. L. R., 180: 23 W. R., 136

I. L. R., 13 Calc., 237

L. R., 13 I. A., 60

See CONTRACT ACT, s. 78.

[I. L. R., 4 Calc., 801

See RIGHT OF SUIT—MISREPRESENTATION.

[I. L. R., 24 Bom., 166

See CASES UNDER VENDOR AND PURCHASER—BREACH OF WARRANTY.

WARRANTY OF TITLE.

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—GENERALLY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS . I. L. R., 2 Bom., 258

[I. L. R., 17 Mad., 228

See CASES UNDER VENDOR AND PURCHASER—BREACH OF WARRANTY.

See CASES UNDER VENDOR AND PURCHASER—CAVEAT EMPTOR.

WASHERMAN.

See MADRAS TOWNS IMPROVEMENT ACT, 1871, s. 1 . I. L. R., 1 Mad., 174

See WILL—CONSTRUCTION.

[9 B. L. R., Ap., 4

WASTE.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS AND WASTE.

WASTE—concluded.

See HINDU LAW—REVERSIONERS—POWERS OF REVERSIONERS TO RESTRAIN WASTE, ETC.—WHO MAY SUE.

[I. L. R., 6 Calc., 198

6 Moore's I. A., 433

I. L. R., 9 Calc., 817

Marsh., 622

See LANDLORD AND TENANT—FORFEITURE—BREACH OF CONDITION.

[I. L. R., 10 Mad., 351

I. L. R., 22 Mad., 39

See LIMITATION ACT, 1877, ART. 125. (1859, s. 1, CL. 16) . 7 B. L. R., 131

————— by mortgagee in possession.

See MORTGAGE—ACCOUNTS.

[I. L. R., 15 Mad., 290

1. ——— Limitation—*Allegation of waste—Prayer for protection from contemplated waste.—Held per PHEAR, J., that where a suit was one to prevent contemplated waste, it was not barred by lapse of time.* GROSE *v.* AMIRTAMAYI DAS

[4 B. L. R., O. C., 1: 12 W. R., O. C., 13

BISWANATH CHUNDER *v.* KHANTAMANI DAS

[7 B. L. R., 131

2. ——— Liability for waste—*Hindu widow; liability for waste committed by her husband as administrator.*—In a suit against a widow individually, and not in her representative capacity, to recover plaintiff's share of property alleged to have been in her possession, the suit being one wherein defendant was charged with devastation in respect of such property only.—*Held* that defendant was not liable in that suit to be made answerable out of her husband's assets for any devastation which he might have committed. STAVES *v.* DIAS

[10 W. R., 444

WASTE LANDS.

See LANDLORD AND TENANT—MIRASIDARS. [I. L. R., 1 Mad., 205

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[I. L. R., 9 Mad., 175

See SETTLEMENT—EVIDENCE OF SETTLEMENT . I. L. R., 26 Calc., 792

See SETTLEMENT—RIGHT TO SETTLEMENT. [4 Mad., 429

See SETTLEMENT—SUBJECTS OF SETTLEMENT . . . 1 Mad., 12, 407

See VALUATION OF SUIT—SUITS—WASTE LANDS, SUIT FOR . 7 W. R., 349

————— Grant of—

See MORTGAGE—FORM OF MORTGAGES. [I. L. R., 21 Calc., 882
L. R., 21 I. A., 96

————— made cultivable.

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.

[I. L. R., 24 Calc., 256

WASTE LANDS—continued

— Right of village to pasturage on—

See JURISDICTION OF CIVIL COURT—
PENT AND REVENUE SETTS BOMBAY

[I L R., 21 Bom., 684

1 ——— Presumption from land lying waste—Evidence as to possession—The fact of land lying waste does not of itself show that no one is in possession. **MAHOMED ALI v. SHIRUM ALI**
[8 W. R., 423

2. ——— Ownership of waste land—Presumption as to possession—Where land is waste and there is no visible sign of occupation the possession must be taken to go with the right and the right is *prima facie* in the zamindar of the estate to which the waste land belongs. **WOODWANT MAH TOOR v. HUTOOMAN PERSHAD SIVON**
[23 W. R., 419

3 ——— Ownership of waste land not belonging to any private person—Unsettled and unoccupied waste land not being the property of any private owner must belong to the State. **PROSVTO COOMAR ROY v. SECRETARY OF STATE FOR INDIA IN COUNCIL**
[I L R., 20 Cal., 702
[3 C W N., 695

4 ——— Possession of waste land—Limitation—Presumption—Proof of title—There may be such possession of waste lands as to protect a suit from being barred by limitation; and where the question of possession is doubtful a presumption will arise in favour of the party who proves title. **MAHOMED BASIR v. KUREEM HIRAN**
[11 W. R., 238

5 ——— Possession—Presumption—Presumption of title—In disputes as to the right to possession of waste and jungle lands it is only in cases where neither party has exercised any acts of ownership over the lands in question that the Court may resort to evidence of title and presume that the party proves to have it has also possession. **RAM BANDHU v. ARSO BHATTU**
[5 C L. R., 481

6 ——— Title to uncultivated or jungle lands—Adverse possession—Limitation—Title of ownership—If a person's possession for a sufficiently long time is proved the title of a person to uncultivated or jungle land may be barred by limitation in the same manner and to the same extent as in the case of cultivated land; the evidence of possession being the exercise of such acts of ownership as would ordinarily be exercised over property of that nature. **MITTERJEET SIVON v. PADMA KESHAD SIVON**
[23 W. R., 368

See WATSON v. GOWERSWORTHY

[3 L. R., Sup. Vol., 182 3 W. R., 73

WASTE LANDS—continued

in such respects the claim on the ground that they had built wells and water courses on the land and had a right also to use it as a threshing-floor and for stacking cow-dung. Held that the defendants having acquired no right adverse to the plaintiff as owners by prescription or otherwise in the land, their right of use could only be as licensees of the plaintiff; and an authorisation could not interfere with their right to the well which were works of a permanent character, and on which the defendants had incurred expenses. He could revoke the license as to the other use claim of the land, and his claim to build the house should therefore be decreed. **LAWD MORTGAGE BANK OF INDIA v. MATH**
[I L R., 8 All., 64

8 ——— Rights of zamindar in respect of waste lands. Provisions of regulations as to rights of pasturage—Held that a general provision on cow-dung in a village was that village cattle might graze on the waste land of the village could not be construed in the absence of any definite covenant to that effect as depriving the zamindar of his right to reclaim such waste lands. **RAM SARAN SIVON v. MATH SIVON**
[I L R., 19 All., 173

9 ——— Act XXIII of 1863, s. 5—Sale to contest sale—Where the Collector failed to give notice of his intention to dispose of the estates it was not incumbent on the plaintiff to contest the sale within the period prescribed by s. 5 Act XXIII of 1863. **HUMMET SIVON v. COLLECTOR OF MIZORA**
[2 Agra, 258

10 ——— Act to reclaim waste lands—Suit to contest award by Board of Revenue—Extension of time—Limitation of suit—The Court cannot extend the period of thirty days allowed by s. 5 Act XXIII of 1863 for preferring a suit to contest an award by the Board of Revenue. The filing of a vakalatnama is no intimation of such a suit. **TARANATH DUTT v. COLLECTOR OF SILHET**
[5 W. R., Waste Land Court Ref., 1

11. ——— Statute Interpretation of—Where an Act expressly takes away one particular remedy which would otherwise have been open for enforcing a right of property, or in any other particular interference with proprietary right, but does not in express words or by necessary implication declare that those rights shall cease the method of interpretation which ought to be adopted is to give effect to the Act exactly so far as its words extend, and no further. There is nothing in Act XXIII of 1863 to prevent a person who has a good title and has throughout been in possession or who has a good title and at any time succeeds in peacefully getting possession and is not ousted in a proprietary suit, or who for any other reason is in the adverse possession of a defendant, from defending his right by a declaration of title which the Government may have preferred to make under the Waste Land Act. *Quere* Whether the terms of the Act are so specifically satisfied by making it apply to waste lands of Government and by understanding the claims and objections mentioned

WASTE LANDS—concluded,

in the Act as claims in respect of Government land, and objections with the same limitation. *KRISTO CHUNDER DASS v. STEEL* I. L. R., 12 Calc., 279

12. ————— s. 18—*Suit for compensation for land wrongly sold as waste.*—A purchaser of land sold as waste land under Act XXIII of 1863 cannot be compelled to grant a pottah to a person alleging himself to have been in occupation of the land before the sale. If the claimant has omitted to come in in due time to stay the sale, and the land has actually been sold, his only remedy is by a suit under s. 18 for compensation, making the Collector a defendant. *MAGUN POLLAN v. MONEY* [7 W. R., 474

WATER.

————— Liability for damage done by—
See EMBANKMENTS.
[I. L. R., 3 Calc., 776

——— Rights concerning—

See CASES UNDER INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—WATER.

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

See CASES UNDER RIGHT TO USE OF WATER.

——— Right to use of—

See EASEMENT. I. L. R., 18 Mad., 320
See MADRAS FOREST ACT, s. 10.
[I. L. R., 20 Mad., 279

WATER-CESS.

See CESS. I. L. R., 10 Mad., 282
See MADRAS IRRIGATION CESS ACT, s. 1.
[I. L. R., 12 Mad., 407
I. L. R., 19 Mad., 24

WATER-COURSE.

————— Obstruction of—

See EASEMENT. I. L. R., 23 Bom., 506
See SMALL CAUSE COURT, MOFUSSEIL—JURISDICTION—DAMAGES.
[I. L. R., 18 Mad., 28
I. L. R., 20 Bom., 283

——— Right to use of—

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.
See CASES UNDER RIGHT TO USE OF WATER.

WATER-SUPPLY.

————— Causing diminution of—

See MISCHIEF. I. L. R., 1 Mad., 262
[I. L. R., 10 Bom., 183

WEIGHTS AND MEASURES.

————— Fraudulent use of—*Penal Code, s. 266—Fraudulent intention.*—The mere possession of weights in excess of the authorized standard will not support a conviction under s. 266 of the Penal Code; a fraudulent intent must be charged and proved. *REG. v. DAMO DHAR DALJI*

[I Bom., 181

GOVERNMENT v. KANGALEE MUDUK

[18 W. R., Cr., 7

WELL.

————— Right to use—

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

[I. L. R., 20 Mad., 389

WHARFAGE.

See BILL OF LADING.

[I. L. R., 4 Calc., 736.

I. L. R., 5 Calc., 477

I. L. R., 7 Bom., 386

See INTERPLEADER SUIT.

[I. L. R., 18 Bom., 231

WHARFINGER.

See BILL OF LADING.

[I. L. R., 4 Calc., 736

WHIPPING.

See CASES UNDER SENTENCE—WHIPPING.

1. ————— Juvenile offenders—*Act VI of 1864, s. 3.*—S. 3 of Act VI of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders. *REG. v. KUSA VALAD LAKSHMAN*

[7 Bom., Cr., 70

2. ————— First conviction of adults—*Substituted punishment.*—In the case of adults on a first conviction, or in the case of juvenile offenders whether for a first offence or otherwise, whipping can only be in lieu of, and not added to, any other punishment. *QUEEN v. ABDUOL*

[W. R., 1864, Cr., 38

QUEEN v. KANTIRAM . . . 1 W. R., Cr., 24

QUEEN v. TONAKOOH . . . 2 W. R., Cr., 63

QUEEN v. AMARUT . . . 4 W. R., Cr., 20

3. ————— Whipping Act (VI of 1864), s. 2—*Whipping in lieu of fine or other punishment under the Penal Code (Act XLV of 1860).*—When an accused person is sentenced to whipping under s. 2 of the Whipping Act (VI of 1864), the punishment of fine or imprisonment or both cannot be legally inflicted under the Penal Code in addition to the whipping. The word "punishment" in s. 2 of the Act means the total of punishments awardable under the Penal Code. *QUEEN-EMPRESS v. DAGADU* . I. L. R., 16 Bom., 357

4. ————— Act VI of 1864.—Under Act VI of 1864 (the Whipping Act), a juvenile

WHIPPING—continued

offender means a person under the age of sixteen years. *REG v MUHAMMAD ALI VALAD ABDOU ALI* (8 Bom., Cr., 8)

6 ———— *Act VI of 1864, s. 10—Criminal Procedure Code, s. 892—By the term "juvenile offender" in s. 11 of 1864 (Whipping Act), meant an offender under the age of sixteen years. *Reg v Muhammad Ali, 8 Bom., Cr., 9*, referred to. *EXPRESS v DIN ALI**

[1 L. R., 8 All., 482]

8 ———— Sentence of whipping when allowable—*Act VI of 1864 s. 4—Offence after previous conviction—The punishment of whipping under s. 4 Act VI of 1864, can only be inflicted on a second conviction of a person who, having served a sentence of imprisonment, again commits a crime. *QUEEN v UDAI PATNAIK**

[4 B. L. R., A. Cr., 5; 12 W. R., Cr., 68]

7. ———— Offence after previous conviction—Previous conviction not shown—On a reference by a sessions Judge under s. 434 of Criminal Procedure Code a sentence of whipping was imposed in the case of a person who had not committed a crime under s. 4 Act VI of 1864. *SCRYA BIV* (Bom., Cr., 38)

REG v BABJI VALAD DAPU. 4 Bom., Cr., 5

8 ———— *Act VI of 1864 s. 5—Second conviction for offences committed before first conviction—S. 3 of Act VI of 1864 (the Whipping Act) does not apply to cases in which the second conviction is for an offence committed previously to the first conviction. *REG v KESA VALAD LAKSHMAN**

7 Bom., Cr., 70

9 ———— Previous conviction—A sentence of whipping founded on a previous conviction of the prisoner is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. *ANONYMOUS* 5 Mad., Ap., 1

ANONYMOUS. 5 Mad., Ap., 39

10. ———— Theft in dwelling house—*Act VI of 1864 s. 5—Previous conviction of theft—A prisoner convicted of theft in a dwelling house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping, under Act VI of 1864 s. 3. *REG v CHANDIA VALAD SHUMIA**

7 Bom., Cr., 98

11. ———— *Act VI of 1864 s. 7—Conviction of dishonestly receiving stolen property—Previous conviction for theft—P was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped to be rigorously imprisoned, and, on the expiration of the term of imprisonment to furnish security for good behaviour. Held that the offence of theft not being the same offence as that of dishonestly receiving*

WHIPPING—continued

stolen property, the punishment of whipping was illegal. *EXPRESS v PARTAB*

[1 L. R., 1 All., 680]

12. ———— *Conviction of separate offences—House-breaking to commit theft, and "theft"—Whipping Act, VI of 1864, s. 2—Where a prisoner convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced on the first head of charge to one year's imprisonment under s. 457 of the Criminal Procedure Code, and on the second head of charge to six months' imprisonment under s. 457 of the Criminal Procedure Code, the sentence of whipping under Act VI of 1864 s. 2 was illegal. *QUEEN v BIV ABU**

8 Bom., Cr., 1

13. ———— *Act VI of 1864, s. 7—Conviction of theft—A sentence of whipping cannot with reference to Act VI of 1864 s. 7, be passed on a conviction for theft under s. 379, Penal Code as the former section only provides for sentences of imprisonment for a term not exceeding three years. *QUEEN v FAN CHENDER DAT**

[31 W. R., Cr., 40]

14. ———— *Attempt at house-breaking with view to theft—In the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal. *REG v BELLA VALAD PARSHIA**

3 Bom., Cr., 37

15. ———— *Substitution of whipping for other punishment—Sentence—Theft—Whipping may be substituted for any other punishment for the offence of theft in a dwelling house. *QUEEN v JIVABHO KHAN**

3 W. R., Cr., 30

16. ———— *Act VI of 1864 s. 7—Whipping in addition to other sentence—A sentence of whipping passed on a person who is already under sentence of death, or transportation, or penal servitude, or imprisonment for more than five years is illegal. If the sentence of whipping precede instead of follow, the whole sentence rendering the infliction of the whipping illegal. *ANONYMOUS**

[1 L. R., 1 Mad., 60]

17. ———— *Act VI of 1864 s. 7—Power of Magistrate—When a Magistrate in exercise of the powers conferred by s. 45 of the Criminal Procedure Code 1861, passed a cumulative sentence against a person convicted of two or more offences at the same time of two or more offences punishable under the Penal Code—Held per PRACOCK, C.J., and PHILLIPS, and STOKES, JJ., that he could not, in addition to the penalties provided by the Penal Code sentence the prisoner to whipping under Act VI of 1864; nor could he exceed twice the extent of his and vary jurisdiction as defined by s. 22 of the Criminal Procedure Code 1861. Held further per STOKES, J., that in the case of hardened offenders, a Magistrate can award whipping in addition to*

WHIPPING—continued.

the maximum of imprisonment which he is competent to award. *Held per* MACPHERSON and JACKSON, JJ., that the Magistrate may in such case, in addition to awarding double the punishment which may be awarded for a single offence, award the punishment of whipping; but only one whipping can be awarded. *NASSIR v. CHUNDER*

[B. L. R., Sup. Vol., 951: 9 W. R., Cr., 41

RUTTUN BEWA v. BUHUR. JHOWLA v. BUHUR
[14 W. R., Cr., 7

18. ——— *Act VI of 1864—Penal Code, ss. 325, 342, 378—Criminal Procedure Code (Act XXV of 1861), s. 46—Cumulative sentences.*—Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under s. 342, six months' imprisonment for the offence of voluntarily causing grievous hurt under s. 325, and to whipping with twenty stripes for the offence of that under s. 378 of the Penal Code, it was held (KEMP and PHEAR, JJ., dissenting) that the sentence was legal. Where a person is convicted at the same time of two or more offences punishable under the Penal Code,—*Held* (KEMP and PHEAR, JJ., dissenting) that it is lawful for the Court, in addition to the penalties prescribed by the Penal Code, to sentence the prisoner to whipping. *Nassir v. Chunder, B. L. R., Sup. Vol., 951*, not followed. *MANIBUDDIN v. GAUR CHANDRA SHAMADAR*

[7 B. L. R., F. B., 165: 15 W. R., Cr., 89

19. ——— *Magistrate of second class under Criminal Procedure Code, 1872—Criminal Procedure Code (Act X of 1882), ss. 2 and 32.*—A person appointed a Magistrate of the second class under Act X of 1872 is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. *EMPRESS v. BHAGVANTA RAVJI*
[I. L. R., 7 Bom., 308

20. ——— *Whipping in addition to imprisonment—Criminal Procedure Code, 1872, ss. 305, 310.*—In passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. On the recommendation of the Sessions Judge (who referred to ss. 305 and 310, Act X of 1872), the High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out. *HUR CHUNDER KULAI v. JAFER ALI*
20 W. R., Cr., 72

21. ——— *Grounds for sentence of whipping—Statement of grounds in judgment.*—When a sentence of whipping is imposed, the grounds for that punishment should be stated on the judgment. *BADIYA v. QUEEN*. I. L. R., 5 Mad., 158

22. ——— *Previous convictions, Proof of—Kyfeut.*—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous

WHIPPING—concluded.

convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way: a mere kyfeut is no evidence whatever. *QUEEN v. NUZEE NUSHYO* . . . 15 W. R., Cr., 52

23. ——— *Mode of infliction of sentence of whipping—Stay of sentence, Grounds for—Act VI of 1864, ss. 11 and 12.*—Meaning of the words "execution shall be stayed" in Act VI of 1864, s. 11. Ss. 11 and 12 together mean that a man sentenced to whipping is not to be whipped unless in a fit state to bear it; the whipping should not be commenced, but if it be commenced, it is not to be continued longer than the man is fit to bear it; and then the sentence has been satisfied, for it cannot be executed by instalments. *ANONYMOUS*
[3 Mad., Ap., 1

24. ——— *Time after sentence within which whipping may be given—Act VI of 1864, s. 9.*—A sentence of flogging cannot be carried out after the expiry of the limit of fifteen days from the date of sentence provided in s. 9 of Act VI of 1864. *ANONYMOUS* . . . 6 Mad., Ap., 38

This ruling was held to be applicable to s. 310 of the Code of Criminal Procedure, 1872. *ANONYMOUS* . . . 7 Mad., Ap., 30

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[5 W. R., 221

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[I. L. R., 18 Bom., 468]

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[I. L. R., 1 Bom., 164]

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7 Bom., Cr., 50]

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———— Removal of husband's property
by—

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1 Mad., Ap., 23
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WILD ANIMALS

1. ——— Animala ferre natura—
Escape of wild animals kept in confinement—Return
or pursuit of such animals—Wild animals are to

WILD ANIMALS—concluded.

longer the property of a man than while they continue in his keeping or actual possession; but if they regain their natural liberty, his property ceases until they have a mind to return, which is only to be known by their usual custom of returning or are instantly pursued by their owner, &c. during such pursuit his property remains. CHITTA CHITTA DOSE, COLLECTOR OF BELHET 21 W. R., 75

2. ——— Capture of wild elephant—Right of owner of land where captured—Right of finder—A wild elephant, having fallen into a pit made by K. N. in his own land, was seen, removed, and tamed by U. M. without the leave of K. N. Held that K. N. was the captor and the U. M. acquired no property in the elephant. MAKATH UYI MOXI v. MALADAN HAYADAVYI HAIN [I. L. R., 4 Mad., 298]

3. ——— Escaped elephant—Ownership—Recapture—A tame female elephant escaped from her master's fold in company with a herd of wild elephants and resumed her natural wild habits. The owner plaintiff abandoned his search after two months and then offered a reward of Rs. 100 to any person who should recapture her. At the end of four months she was recaptured by the defendant, who was compelled to tame her in the same way as if she had been an ordinary wild elephant. Plaintiff offered the reward of Rs. 100 to the defendant and demanded the elephant but the demand was refused. Held that under the circumstances the plaintiff had lost all claim to the animal. PEAL v. CAMPBELL [3 C. L. R., 515]

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[I. L. R., 20 Calc., 373
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- See LIMITATION ACT, 1877, ART. 132.
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[I. L. R., 15 Calc., 725
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I. L. R., 21 Calc., 683
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[I. L. R., 20 Calc., 806

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- See RES JUDICATA—ESTOPPEL BY JUDG-
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- See SUCCESSION ACT, s. 237.
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[I. L. R., 6 Bom., 73.

1. EXECUTION.

1. ——— Succession Act, s. 50—*Signature of testator—Nature of execution required.*—To entitle the executor to probate, the signature of the testator must be that of a conscious person, and not the results of mere mechanical movement of the hand. *KALEE TARA DOSSIA v. NOBIN CHUNDER KUR* 21 W. R., 84.

2. ——— *Execution of will by impression of facsimile of the name—Succession Act, s. 50.*—A testator, who for a number of years was, as he was unable to write, in the habit of using a name stamp, which used to be attached by a servant to any document or paper he wanted to sign, executed a will, and under his direction a servant affixed the impression of his name stamp on the said document. *Held* that the execution of the will in this case was proper and came strictly within the meaning of the words used in s. 50 of the Indian Succession Act. *NIRMAL CHUNDER BANDOPADHYA v. SABATMONI DEBYA* I. L. R., 25 Calc., 911
[2 C. W. N., 642.

3. ——— *Want of proof of due execution and of knowledge by testatrix of contents of will.*—Where the defendant claimed the property in dispute under the will of a Hindu widow, but kept back the evidence which would have clearly established that the mark purporting to be made by the widow was really made by her or at her desire, and that at the time of the execution the nature and contents of the documents were well known to her, the Court refused to act upon it. *HABIBAL HABIVANDAS v. PRANVALDAS PARBHUDAS*
[I. L. R., 16 Bom., 228.

4. ——— *Probate and Administration Act (V of 1881), s. 50—Evidence as to the execution of a will by a person near death.*—On a question of fact raised in 1887, whether an alleged testator had or had not been able to duly execute his will, as he was said to have done during his last illness, the judgment of the District Court in the affirmative was restored. The judgment of the High Court which would have revoked the probate granted in 1882 was reversed, upon the consideration of conflicting evidence as to the mental capacity of

WILL—continued.

1 EXECUTION—continued

He testator and as to the genuineness of his signature
ROMESH CHUNDER MUKERJI v. RAJANI KANTI
MUKERJI L. R., 21 Calc., 1

Evidence as to execution—Duty of Judge—The question whether an alleged Hindu will was genuine or not was raised by the relations of the deceased on an application, under the Probate and Administration Act (V of 1881) for administration with the will annexed filed by the proponent. It was held upon evidence, which was

Judge in such cases patiently to investigate the

manners and habits of thought. DOWLAT KORK v.
PANCHU DAS L. R., 25 Calc., 469

[L. R., 25 I. A., 31
3 C. W. N., 177]

Proof of due execution of will where the mental capacity of testator is in dispute—Rules for decision of such cases—Presumption—Duty of Appellate Court in deciding on evidence of witnesses—In all cases in which

capacity of a person whose conduct they have observed and whose state of mind they desire to: for the original Court has not merely the better opportunity of judging of the truthfulness of the evidence from the manner in which it is given but also of judging how far the witnesses possess those qualities on which depend much of the value of evidence given in good faith viz., power of observa-

testator was such that it was doubtful whether the

document as his will, but also that he knew and approved of the contents of the instrument; and in such cases of disputed execution the Judge should consider and express an opinion upon both these questions. In ordinary cases execution of a will by a competent testator raises the presumption sufficient. If nothing appears to the contrary to establish that he knew and approved of the contents of the will.

WILL—continued

1 EXECUTION—continued

by evidence which shows that it is, to say the least, very doubtful whether his state of mind was such that he could have "duly executed" the will as he is alleged to have done, the Court ought to find whether upon the evidence the testator was of sound disposing mind and did throw and approve of the contents of the will. Where this had not been done the Appellate Court, after considering the whole evidence, held, contrary to the decision of the lower Court that the will was not proved and refused probate. MOONESH CHUNDER BISWAS v. RAMKISHORE DAS

[L. R., 21 Calc., 270]

not resemble one where a testator near death n. l. l., with the requisite degree of knowledge, had executed a disposition of his property for which previously and while his mind was still in vigor, he might have given instructions. PASH MONISH DAS v. CHAND CHUNDER BISWAS L. R., 25 Calc., 821

[L. R., 25 I. A., 100
3 C. W. N., 321]

Proof of execution of will—Probabilities—Evidence—The fact of the execution of a will was disputed by a testator's relations. They impugned the will mainly on the theory of the improbability of it having been executed by him under the circumstances existing at the time, and in the presence of the witnesses alleged to have attested it. They admitted his intention to execute such a will but contended that having long deferred the execution he had died without having effected it. To outweigh the strong and satisfactory evidence upon which the affirmance of due execution rested, it would have been necessary that the improbabilities should have been correct and clearly made out. But in their Lordships' opinion, it was neither the one nor the other and was based on an exaggerated view. The alleged differences against the will were not borne out, and on the other hand the testimony in support of it was good. The judgment of the High Court was affirmed. LALIT NARAYAN DAS v. LALIT KORK L. R., 23 Calc., 510

[L. R., 23 I. A., 12]

Contesting validity of will—Alleged testamentary incapacity—Although the mental faculties of a person suffer from partial paralysis may have been affected by the physical weakness, he may still be capable of devising and of executing a will of a simple character, although unable to execute or comprehend all the details of a complex settlement. In one sense the testator may not have been in the state which the witnesses described as "the

WILL—continued.**1. EXECUTION—continued.**

full senses." He was feeble in body. The vigour of his mind was impaired, and his utterance was defective. On the other hand, there was nothing in the evidence which could reasonably lead to the inference that he was incapable of understanding such business as fell to his lot, or of regulating the succession to his property. At the hearing of the suit, it was alleged that he was subject to insane delusions, as to which, however, the Courts below concurred in finding that they had not been shown to have existed. The statements made by him alleged to have been the result of delusion, had not been shown to be altogether without foundation. As to this, their Lordships' opinion was that, in order to constitute an insane delusion affecting the question of testamentary capacity, it should have been shown, not only that it was unfounded, but also that it was so destitute of foundation that no one, save an insane person, would have entertained it. The judgment that this testator had not testamentary capacity appeared to them to have had the unsafe basis of speculative theory derived from medical books and judicial dicta in other cases, and not to have been founded on the facts proved in this. *SAJID ALI v. IBAD ALI*

[I. L. R., 23 Calc., 1
L. R., 22 I. A., 171]

8. — — — Incapacity from illness—Influence not amounting to coercive influence.—A Khoja Mahomedan resident in Bombay made his will in 1886, appointing his wife, and his eldest son by a former wife, to execute it. The testator died on the 9th February 1891, having, at different times, in the interval, made four codicils. The widow, applying for probate of all the above, propounded a fifth codicil, alleging it to have been made by her husband on the 6th February 1891. The son petitioned for probate to be delivered to him and to the widow, but only of the will and of the first two codicils, contesting the three later codicils as having been made under undue influence exercised by the wife. He disputed the last codicil, not only on the ground of undue influence, if the codicil had been in fact executed, but because at the time of the alleged execution his father was almost unconscious, and unable to understand what he was doing. The High Court, in its original testamentary jurisdiction, refused probate of the three disputed codicils, granting probate of the will and of the first two codicils only. The Appellate High Court granted probate of the will and of the five codicils, finding that no undue influence had been exercised, and that the fifth had been executed by the testator with knowledge and comprehension of its contents and of his free volition. The Judicial Committee affirmed the judgment of the Appellate Court as to the absence of undue influence. In their opinion, if there was not evidence, and there was not, to show coercion in the special matter of the codicils, general assertions of the wife's commanding character, and of the husband's weakness, and of their differences went for little. But in regard to the fifth codicil, they affirmed the judgment of the original Court, finding the evidence to have left open the inference that

WILL—continued.**1. EXECUTION—concluded.**

the testator had been at the time when it was alleged by the widow that he had made this codicil too exhausted and ill for such a testamentary act. *SALA MAHOMED JAFFERBHAI v. DAME JANBAI*

[I. L. R., 22 Bom., 17
L. R., 24 I. A., 148
1 C. W. N., 481]

2. ATTESTATION.

10. — — — Directions as to attestation—Succession Act, s. 50—Probate.—An unprivileged will will not be recognized by the Court and admitted to probate unless executed in accordance with the directions contained in Part VIII, Act X of 1865, such directions being imperative and not merely declaratory. *Held* that the words "in the presence of the testator," in cl. 3 of s. 50 of the Succession Act, may receive the same construction that has been put upon them in the English Courts, but cannot receive larger interpretation. *ESAIAS v. GABRIEL*

[3 N. W., 32]

11. — — — Presence of witnesses—Succession Act (X of 1865), s. 50.—Where the testator does not himself sign the will, but some other person signs it in his presence and by his direction, then besides this other person, there must be two witnesses who must sign the will in the presence of the testator. *In the goods of Roymoney Dossee, I. L. R., 1 Calc., 150, and Hurro Sundari Dabia v. Chunder Kant Bhuttacharjee, I. L. R., 6 Calc., 17, cited.* *IN THE MATTER OF THE PETITION OF HEMLOTA DABEE*

[I. L. R., 9 Calc., 226]

S. C. GRISH CHUNDER BANERJEE v. HEMLOTA DEBI

11 C. L. R., 359

12. — — — Attesting witness—Succession Act, s. 50—Signature made for testator by party afterwards attesting.—The person making the signature of a will for the testator is not competent as an attesting witness of its execution under the provisions of the Succession Act. *In the goods of Bailey, 1 Curt., 914, and Smith v. Harris, 1 Rob., 262, distinguished.* *IN THE GOODS OF NANABHAI SORABJI MESTRI. AVABAI v. PESTANJI NANABHAI*

[11 Bom., 87]

13. — — — Mode of attestation—Execution of will—Wills Act, XXV of 1838, s. 7.—S. 7 of the Wills Act, XXV of 1838, enacts "that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned: (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." A testator signed his will in the presence of a witness who subscribed it in his presence, and some time afterwards, upon the arrival of another witness, the testator, in the

WILL—continued

2. ATTESTATION—continued.

joint presence of the former witness and the other subscribing witness, acknowledged his subscription at the foot of the will. The second witness then subscribed the will, and the first witness in his and the testator's presence acknowledged his subscription, but did not re-subscribe. *Held* by the Judicial Committee (affirming the decision of the Supreme Court at Calcutta) that the requirements of the Act had not been sufficiently complied with; it being necessary that both witnesses should be jointly present at the same act of the testator and jointly subscribe it in his presence. *CASEMENT v. FLETCHER*

[3 Moore's L. A., 395]

14. — Acknowledgment of signature by testator. — It is a sufficient acknowledgment by a testator of his signature to his will if he makes the attesting witnesses understand that the paper which they attest is his will, though they do not see him sign it, or observe any signature to the paper which they attest, provided that the Court is satisfied that the testator's signature was on the will when the witnesses attested it. *MAVICKHAI v. HOMASAI ROMANAI*

[L. L. R., 1 Bom., 647]

15. — Sufficiency of attestation—*Succession Act (X of 1865), s. 60—Probate—Hindu Wills Act (XXI of 1870), s. 2*—By the Succession Act, s. 60, no particular form of attestation is necessary; therefore, where, to a document purporting to be her last will and testament the name of the testatrix was written by A, and the testatrix then in his presence affixed her mark, and A in her presence wrote beneath it "by the pen of A" and the testatrix was then identified to the Registrar, who was present, by B, who had seen her affix her mark to the document, and who in her presence put his signature as having identified her. *Held* a sufficient attestation; and probate was granted. *IN THE GOODS OF HOUMCHET BOSSER*

[L. L. R., 1 Cal., 160]

16. — *Succession Act (X of 1865) s. 60, cl. 3—Initials of witness—Solemn*—If the attesting witnesses affix their initials at the time of witnessing the execution of a will it is a sufficient compliance with the terms of s. 60 of the Succession Act. *ANWATEE v. AILMALAI*

[L. L. R., 15 Mad., 261]

17. — Will not attested by two witnesses—*Succession Act (X of 1865), s. 60—Hindu Wills Act (XXI of 1870), s. 2, cl. (a) and (b)*—The Hindu Wills Act (XXI of 1870) applies s. 60 of the Indian Succession Act (X of 1865) to those wills only that are mentioned in s. 2 cl. (a) and (b), of the former Act. A will which was not such a will as there mentioned is held to be valid though not attested by two witnesses. *IN THE ESTATE OF JAGANNATH*

[L. L. R., 20 Bom., 674]

18. — *Paradashin lady*—*In the presence of*—*Succession Act (X of 1865), s. 60*—After execution of her will by a testatrix, a *paradashin lady*, and its attestation by her presence by a witness who had seen her execute it, it was presented for registration, on the testatrix

WILL—continued.

2 ATTESTATION—continued.

sitting behind one folio of a door which was closed, the other fold being open, and the Registrar and another person who identified the testatrix being in the verandah outside the room behind the door of which the testatrix sat all that the Registrar actually saw of her being her hand. The testatrix admitted her execution of the will, and her admission was enforced on the will and witnessed by the Registrar, and the person who identified her, at the same time. *Held* that the witness was "in the presence of" the testatrix within the meaning of s. 60 of the Succession Act (X of 1865). *HORENDRANATH ACHARYA CHOWDHURY v. CHANDRANATH LALINI*

[L. L. R., 16 Cal., 10]

19. — *Succession Act (X of 1865), s. 60—Proof of due attestation of will—Strict proof of due attestation whether necessary*—The widow of J, the testator, applied for probate of his will. The writer of the will deposed that he had signed the will before the testator signed, and that the testator signed immediately after him, and that none of the witnesses signed in his presence. D one of the witnesses said that he signed the will after the testator had personally acknowledged his signature to it, and that when he signed other witnesses' names were on the will. Of the other witnesses three were proved to have been dead and the remaining witness was not examined, but his signature as well as the signatures of the witnesses who were dead were proved. There was no direct evidence that the testator had acknowledged his signature to the witnesses or that the will was otherwise properly attested by a second witness. *Held* that strict affirmative proof of due attestation is not absolutely necessary in cases of this class; and if the circumstances are such as to warrant the Court in reasonably concluding from those circumstances that the will has been duly attested probate may be granted. That upon the whole evidence it could reasonably be concluded that the will had been duly attested in accordance with law. *Light v. Sanderson* L. R. 9 F. 10, 189, referred. *SING SUNDARI DEVI v. RAMAIAH DEVI*

[4 C. W. N., 204]

20. — *Grant of probate—Signature—1st Act, s. 6 (Wills Act) s. 2—Succession Act (X of 1865), s. 60*—To the will of A a British-born subject and a member of the Bengal Civil Service who died in India possessed of personal property only, a native servant of the testator, purporting to attest the will, appended words in the Persian character signifying "This is A's signature." *Held*, on application for probate that it was not a sufficient attestation of the will. *Solemn*—A signature by a mark would be a sufficient attestation to a will by a witness under the Succession Act. *IN THE GOODS OF WISSE*

[13 B. L. R., 302]

21. — *Succession Act (X of 1865) s. 60—Hindu Wills Act (XXI of 1870), s. 2*—By s. 60 of the Succession Act (X of 1865) clearly intends that the two attesting witnesses to a will shall sign their names after the testator or testatrix shall have executed the will. *Dispositive*

WILL—continued.**2. ATTESTATION—continued.**

v. Doyaram Jana, I. L. R., 5 Calc., 738, and Fernandez v. Alves, I. L. R., 3 Bom., 382, followed. If a testatrix admits a signature on a will to be hers before a Registrar of Assurances, and is identified before him by one of the witnesses to the signature, and both the Registrar and the identifier sign the names as witnesses to the admission made,—*Held* that such an attestation would be sufficient to satisfy s. 50 of Act X of 1865. *In the goods of Roymoney Dossee, I. L. R., 1 Calc., 150, followed.* IN THE MATTER OF THE PETITION OF HURRO SUNDARI DABIA. HURRO SUNDARI DABIA *v.* CHUNDER KANT BHUTTACHARJEE

[I. L. R., 6 Calc., 17: 6 C. L. R., 303]

22. ——— *Attesting witness, when he should sign—Succession Act (X of 1865), s. 50.*—The signatures of two or more attesting witnesses to a will required by s. 50 of the Succession Act (X of 1865) must be attached to the will after, and not before, the testator's signing or affixing his mark to it. *Quare*—Whether a will can be properly attested by a marksman. *BRISONATH DINDA v. DOYARAM JANA*

[I. L. R., 5 Calc., 728: 5 C. L. R., 565]

23. ——— *Succession Act (X of 1865), s. 50—Witness—Signature—Mark.*—The direction contained in s. 50, cl. 3, of the Succession Act (X of 1865) as to the signature of witnesses attesting an unprivileged will is not satisfied by the witnesses affixing their marks. It is necessary for the validity of a will that the actual signature, as distinguished from a mere mark, of at least two witnesses should appear on the face of the will. *FERNANDEZ v. ALVES*

[I. L. R., 3 Bom., 382]

24. ——— *Will attested by marksmen—Witness—Signature—Mark—Succession Act (X of 1865), s. 50.*—The direction contained in s. 50, cl. 3, of the Succession Act, as to each of the witnesses signing the will, is not satisfied by the witnesses affixing their marks, and it is necessary for the validity of a will that the signatures, distinguished from a mere mark, of at least two witnesses should appear on the will. *Fernandez v. Alves, I. L. R., 3 Bom., 382, followed.* *In the goods of Wynne, 15 B. L. R., 392, dissented from.* If a testator, on presenting his will for registration, admits a signature on the will to be his before a Registrar, and is identified before him by a witness, and both the Registrar and the identifier sign their names on the will as witnesses to the admission of the testator, such attestation is sufficient to satisfy the requirement of cl. 3 of s. 50, Act X of 1865. *In the matter of Hurro Sundari Dabia, I. L. R., 6 Calc., 17, followed.* NITYE GOPAL SIRCAR *v.* NAGENDRA NATH MITTER

25. ——— *Acknowledgment of signature by testator—Attestation—Witness—Succession Act (X of 1865), s. 50.*—The signature of a testator at the commencement of his will, when the witnesses attested it, and his admission to the attesting witnesses that the paper which they attest

WILL—continued.**2. ATTESTATION—concluded.**

is his last will, constitute sufficient acknowledgment of his signature to his will, even though the witnesses do not see him sign it, or observe any signature to the paper which they attest. The registration of his will by a testator and his signature to the certificate of admission of execution, testified by the signatures of the Sub-Registrar and of a witness, is sufficient attestation to satisfy the requirements of s. 50 of Act X of 1865. *Manickbai v. Hormasji Bomanji, I. L. R., 1 Bom., 547; Hurro Sundari Dabia v. Chunder Kant Bhattacharjee, I. L. R., 6 Calc., 17; and Nitye Gopal Sircar v. Nagendra Nath Mitter Mozumdar, I. L. R., 11 Calc., 429, referred to and followed.* AMARENDRA NATH CHATTERJEE *v.* KASHI NATH CHATTERJEE

26. ——— *Unattested alterations in a Hindu will—Letters of administration—Succession Act (X of 1865), s. 58.*—In a will properly attested, some subsequent alterations were made by the testator in the presence of the Registrar, but these alterations were unattested. *Held* that, under s. 58 of the Indian Succession Act, made applicable to the Hindus by the Hindu Wills Act, the alterations should have been attested, as the will itself, by two persons signing in the presence of the testator, and so letters of administration should issue, not with the copy of the will, but with the copy of the will without the alterations. *RAGHUBAR DYAL v. RAM RAKHAN LALL*

27. ——— *Repudiation of signature by attesting witness.*—The mere fact of an attesting witness to a will repudiating his signature does not invalidate a will, if it can be proved by the evidence of other witnesses of a reliable character that he has given false evidence. If he does repudiate it uncontradicted, the mere fact of there being two witnesses purporting to have witnessed the testator's signature is not a compliance with s. 50 of the Succession Act. *NUBO KISHORE DOSS v. JOY DOORGA DOSSEE*

28. ——— *Forged attestations, Effect of—Effect on title given under genuine portion of will.*—C, under a power given to her by the will of L, her husband, a Hindu, sold certain land to R. After the sale, certain forged attestations were added to the will. In a suit brought by the heir of L to recover the property sold by C to R, R relied on the will which was produced by other defendants in the suit. *Held* that R's title could not be affected by the forgery. *PARAMMA v. RAMACHANDRA*

[I. L. R., 7 Mad., 302]

3. FORM OF WILL.

29. ——— *Buddhist will—Probate—Succession Act (X of 1865), s. 331.*—Probate may be granted of the will of a Buddhist made after the 1st January 1866. It is not necessary that the will of a Buddhist should be executed according to the formalities prescribed by the Succession Act. IN THE MATTER OF KOKYA DINE

[2 B. L. R., A. C., 79: 10 W. R., 417]

WILL—continued.

3. FORM OF WILL—continued.

30 ——— Testamentary document—Will to have effect on contingency—Probate—A, being ill and away from home, wrote to his brother B certain directions as to the management of his property, and concluded "Brother, if I die of this sickness and survive me, then whatever property I have you will give one-half to C," etc. In another and subsequent letter he wrote to B: "I don't think that the illness I am now suffering from will . . . " etc.

But died suddenly a year later, without having made any other testamentary disposition of his property. In a suit brought by B as executor of A, according to the tenor of these documents against the widow of A, for the purpose of having probate of them

and therefore probate WILL HAD BEEN GRANTED BY THE COURT at the original hearing was reversed because brought in and cancelled. **KAMREVER DOSEER v. HISSOWATZ GHOSH** 2 Ind. Jur. N 8, 6

31 ——— Imperfect form of will—Will unexecuted by testator—Blank spaces in body of will—Application for probate—A testator died leaving, as his will a printed form of will

ever, written his name in the blank space and completed the disposition clause bequeathing all his property to his wife and appointing her sole executrix. Held that this was sufficient, and the will should be admitted to probate. In the goods of **Fasmora**, L. R. 1 P 5 D, 653, referred to in THE GOODS OF PORTHOUSE

(L. L. R., 24 Cal., 784)

32 ——— Document intended to take effect partly in the lifetime of the executant and partly after the executant's death—Probate and Administration Act (V of 1891), s. 5—There is no objection to one part of an instrument operating in presents as a deed and another in futuro as a will. **Cross v. Cross** 8 Q. B. 714; 13 L. J. N. S., Q. B., 217, referred to. **CHAND MAL v. IACHINI NARAIN** [L. L. R., 23 All., 163]

33. ——— Codicil—Probate, Application for—Document referring to will—After letters of administration with the will annexed had been granted, the administrator found a book containing memoranda in the testator's handwriting, made after the date of the will and directing certain dispositions of his property. One entry referred in express terms to the will. The testator was a domiciled Scotchman. Held, on a petition by the administrator, asking that the memoranda might be admitted to probate that the memoranda were not testamentary documents.

WILL—continued.

4. FORM OF WILL—concluded.

and the petition was therefore dismissed. In the goods of **WEMISS**. L. L. R., 4 Cal., 721

4. NUNCUPATIVE WILL.

34 ——— Validity of nuncupative will—Roman Catholics of Portuguese extraction—Intestate succession—Quere—Whether a Roman Catholic of Portuguese extraction is subject to the law of the country of his birth or to the law of the country of his domicile. In the goods of **REBEIRO** 3 W. R., 63

35 ——— Nuncupative will of Mahomedan—Probate and Administration Act (V of 1891), ss. 24 25 26, 63—Succession Act (X of 1855), s. 241 and Ch. IV—Probate may be granted of a nuncupative will in the MATTER OF THE WILL OF MAHOMED ABUL INAS MARIAMBAI [L. L. R., 24 Bom., 8]

5. VALIDITY OF WILL.

36 ——— Military testamentary document—Application for probate—Lapse of time—Invalidity of will—A military testament valid in its inception may be deprived of its privilege by lapse of time. In re **GODAR** 1 Hyde, 100

37. ——— Will of Cutchi Memon—Will disposing of ancestral property—Wills made by members of the Cutchi Memon community, whereby the testators disposed of property which was proved to be ancestral, held to be invalid. **MANOWR SIDICK v. AHMED ABULLA HASSI AHMEDATY v. AHMED** [L. L. R., 10 Bom., 1]

38. ——— Will of East Indian testator.

39 ——— Question of due execution and validity of will—Disposition of immovable property in British India—The validity of a will which purports to dispose of immovable property in British India must be tested by the rules applicable to the execution of wills in British India. **SHARAD DABASIRAO v. LAKSHMIBAI** [L. L. R., 20 Bom., 607]

40 ——— Will procured by importunity of wife—Succession Act, s. 4—A wife who procured her husband to execute a will in execution of a former will in favour of her, but the influence which she exerted

WILL—continued.**5. VALIDITY OF WILL—concluded.**

was not such as to deprive the testator of the exercise of his judgment and volition. *Held* that the conduct of the wife did not amount to undue influence. **MORISON v. ADMINISTRATOR-GENERAL OF MADRAS** [I. L. R., 7 Mad., 515]

41. ——— Proof of genuineness of will—Registration and attestation.—When a document propounded as a will is proved to have been executed and registered by the alleged testator, it is still essential to enquire into the circumstances connected with its execution and registration, when the will is inofficious and there are other suspicious matters connected with it. **KISTO CHURN MOJOMDAR v. DWARKA NATH BISWAS** . . . 10 W. R., 32

42. ——— Blank spaces left in body of will—Alterations and erasures in will—Presumption—Pencil writing subsequent to the execution of the will—Intention of testator.—The circumstance that blank spaces are left in the body of a will is no objection to its being a valid will. If a will contains alterations and erasures, the presumption will be that they were made after the will was executed; and if there is no evidence rebutting that presumption, they will form no part of the will. The lower Court having declined to grant probate of a will (which it held to be proved), on the ground that it was an incomplete will, being of opinion that the blanks, alterations, and cancellations in the will showed that the deceased intended it to be a draft, and not the final expression of his wishes,—*Held* that, the will being one which did not require to be signed by the testator, probate should be granted to include a pencil addition proved to have been made by an attesting witness at the desire of the testator, but excluding all other additions, erasures, or cancellations. **PANDURANG HARI VAIDYA v. VISHNU VINAYAK KANE** . . . I. L. R., 16 Bom., 652

43. ——— Will in excess of power of Hindu widow.—A Hindu widow made a will disposing of property, of which under an award she had only the use during her life, and to which the plaintiff, her son, was entitled after her death. While she was still living, the plaintiff filed this suit, praying that the will might be declared invalid. The defendants were the testatrix and those who took under the will. While the suit was pending, the testatrix died. *Held* that the will should be declared to be invalid so far as it operated to defeat the award. **MAGANLAL PURUSHOTTAM v. GOVINDLAL NAGINDAS** . . . I. L. R., 15 Bom., 697

6. REVOCATION.

44. ——— Evidence as to revocation of a will—Onus of proof of revocation of will.—A will duly executed is not to be treated as revoked, either wholly or in part, by a will which is not forthcoming, unless it is proved by clear and satisfactory evidence that the will contained either words of revocation or dispositions so inconsistent with those of the earlier will that the two cannot stand together. It is not enough to show that the will which is not forthcoming differed from the earlier one, if

WILL—continued.**6. REVOCATION—concluded.**

it cannot be shown in what the difference consisted. It is also settled that the burden of proof lies upon him who challenges the existing will. These propositions are of general application. **MIRZA v. UMDA KHANAM. MIRZA v. GUNNA KHANAM** [I. L. R., 19 Calc., 444
L. R., 19 I. A., 83]

45. ——— Revocation of portion of will—New page of will not duly executed substituted by testator after execution of will—Dependent relative revocation—Probate.—After the death of the testator (H. G. Meakin), his will was found among his private papers in a sealed envelope with the words "H. G. Meakin's will, not to be opened until after death," written in his handwriting on the face of the envelope. The will was wholly in his writing, and was written on four separate sheets of paper pinned together. The first, third, and fourth pages were of blue paper and of the same size, and each of them was signed at the bottom by the testator and by two witnesses. The fourth page stated the date of the will and was signed by the testator and was duly attested by the said two witnesses. The actual execution of the will took place (as was proved by evidence) in March or April 1894. The second page, however, was of a different kind of paper from the other pages and of smaller size, and was signed by the testator, but not by witnesses. This second page contained a bequest to a child who was born in May 1891, i.e., some months after the will was executed. The executors propounded the will. *Held* that probate must be refused. **KEE v. MEAKIN**

[I. L. R., 20 Bom., 370]

7. INSPECTION OF WILL.

46. ——— Practice—Application by next-of-kin of deceased.—The Court, on the application of one who is next-of-kin of a deceased Hindu, ordered a person in possession of an alleged will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by such applicant. **IN THE GOODS OF BALKRISHNA GANPATJI**

[1 Bom., 114]

8. RENUNCIATION BY EXECUTOR.

47. ——— Procedure after renunciation—Proof of execution of will in Court—Administration accounts.—A Hindu testator empowered his executor to lay out such portion of his estate as the executor might think fit towards charitable purposes, and did not dispose of the residue of the estate. The executor renounced, and no probate of the will or letters of administration, with the will annexed, was granted. In a suit by the testator's sole heiress for construction of the will and for administration, the Court allowed the execution of the will to be proved in Court, declared that it was void for uncertainty, and directed the usual administration accounts to be taken. **SURBOMUNGOA DABBE v. MOHENDRONATH NATH** . I. L. R., 4 Calc., 508.

WILL—continued

II CONSTRUCTION.

48 — Construction of will—

Powers to construe will without administration suit—Chancery practice—A testator by his will devised certain house property first for the celebration of pujas and the worship of an idol and then that his children with their families should be allowed to live there. One of the sons used the premises for the purpose of his business as a kavraj which was objected to by the other sons as being contrary to the terms of the will. One of the defendants also contended that, before the Court could construe the terms of the will to ascertain the meaning of the testator, it was necessary to bring a proper administration suit. *Held* that considering the character of the consequential relief sought, the Court could construe the will without an administration suit. That questions between trustees and beneficiaries and between trustees and strangers requiring the construction of provisions in a trust deed have been determined without the Court being asked to undertake the entire administration of the trust. *In re Wall, J 1, 32 CA D 673 approved. BUCCHONCHERY PANDORAY SETH GOOROO PHOSCHOO BEX I L R, 25 Cal, 112*

49 — Rules of construction—In

testament of testator—Meaning of "purchase"—The rule of construction applicable to a will is that words in general are to be taken in their ordinary and grammatical sense unless a clear intention to use them in another can be collected. If the language of a will is perfectly unambiguous and precise, it cannot be strained for the purpose of giving effect to what possibly might have been the intention of the testator but is not expressed or implied in the terms of the testament. *O*, by a clause in his will gave his wife a life interest in the house in his possession, and in the case which he made afterwards "purchase". In *O*'s lifetime his younger brother died, and *O* thereby acquired a house by inheritance. *Held*, there being nothing to show that *O* had used the word "purchase" in any other than its ordinary sense that the language of the will could not be strained in order to give effect to what possibly might have been the testator's desire that he survive the death of his younger brother in his own lifetime, but was not expressed or implied in the terms of the testament and that the house did not pass under the will to the testator's widow. *GOOROO v. GOOROO*

[10 N. W. 210]

50 — Appointment of executors

by implication—*I* instituted in 1905 to recover property belonging to the estate of a testator, claiming to be his executors under a will. The property was alleged to have been entrusted by the testator in 1903 to the defendant. The will contained no express appointment of executors, but it provided that the plaintiff should take care of the estate during the minority of a son who was to be adopted to the testator and impose upon them the duty of providing for the maintenance of persons therein named. *Held* that the plaintiffs were not appointed executors by implication. *SENANAYAKE v. CHENNAIA*

I L R, 20 Mad, 467

WILL—continued

II CONSTRUCTION—continued

51. — Effect of words excluding from inheritance—*Heir-at-law*—*A*, a Parsi inhabitant of Surat died there on the 13th February 1929 leaving him surviving the following relations, viz: *A* daughter *J* (the respondent) by his first wife and

married to *K* and whose son *T* was the appellant. By his will *A* expressly directed that neither *J* nor his daughter *J* nor his will *D* should take any share of his property the whole of which he bequeathed to his brother *F* who, however, pre-

[I L R, 4 Bom, 837]

52. — Commission of manager of estate how calculated—*Intention of testator*—Other questions disposed of in the Court of first instance having remained undecided by the High Court which dealt with the question of jurisdiction alone were considered with reference to whether there had or had not been shown any good reason for reversing or varying the order of the original Court. Among these the question whether the manager's commission was to be calculated on the gross rental of the estate or on the income divisible among the shares was held to be settled by the intention of the testator in calculation in the will. *GOOROO v. SRIYEE I L R, 3 All, 81; 7 C L R, 205 [L R, 7 L A, 107]*

53. — Armenian will—*Devise*—*Absolute estate—Fiduciary for life*—An Armenian by his will in the Bengali language made a gift to his son in the following terms: "I bequeath to *A* as absolute my taluk (which he owned) and 1000 in cash. He shall enjoy the profits of the aforesaid taluk. On his death his sons shall get. The mukhtars shall make over to the satisfaction of *A*." *Held* that the will was to be construed according to equity and good conscience, and not according to technical law. The rule applicable was that unless a contrary intention appeared the estate given was an absolute one. *A* took an absolute estate under the devise. *REDDHORE v. POOROE*

[12 B L R, 74; 10 W R, 181]

54. — Superstitious uses, English law against—*Application of English law*—*Testamentary*—The English rule of law which prohibits the bequest of money for superstitious uses has no application in India. *JODAN v. JODAN*

[5 B L R, 433]

55. — Bequest for performance of religious—*Validity of bequest*—*A* bequest in a will of a sum of money for the performance of religious in Calcutta held valid. *ASWATH v. JODAN*

[2 B L R, O C, 149]

WILL—continued.

9. CONSTRUCTION—continued.

56. ———— *Validity of bequest—Gift to superstitious uses.*—A bequest by a Roman Catholic of Portuguese descent, born and domiciled in Calcutta, for the performance of masses, is not a gift to superstitious use. *DAS MERCES v. CONES* 2 Hyde, 65

57. ———— *Bequest for masses held void as infringing the rule against perpetuities.* *COLGAN v. ADMINISTRATOR-GENERAL OF MADRAS* I. L. R., 15 Mad., 424

58. ———— *Legacy to attesting witness—Succession Act, s. 54.*—A legacy to the attesting witness of a will is void under s. 54 of the Succession Act, whether or not the attestation of the witness is indispensable to the validity of the will. *ADMINISTRATOR-GENERAL v. LAZAR*

[I. L. R., 4 Mad., 244]

59. ———— *Legacy to minor—Absolute gift—Discretion of executor.*—Where there is an absolute bequest and power to executor to delay making over the legacy at discretion,—*Held* that, on attaining majority, the legatee should at once be put in possession. *DE SILVA v. DE SILVA*

[1 Ind. Jur., N. S., 16; Bourke, O. C., 281]

60. ———— *Legacy whether to be paid out of particular fund or out of general assets—Demonstrative legacy.*—Payment of legacies, or gifts of stipends, having been refused by the representatives of the testatrix, on the ground that she had no power to dispose of the fund out of which the will must be construed to direct their payment,—*Held*, on a consideration of the whole will, that the words of the gift were wide enough to charge them upon the whole of her moveable estate; also that, if the words of the will were to be taken in a more restricted sense, the gift of the stipends must be regarded as a demonstrative legacy, and in that view they would be payable out of the general estate, on failure of the particular fund pointed out. *MIRZA v. UMDA KHANAM. MIRZA v. GUNNA KHANAM* I. L. R., 19 Calc., 444

[L. R., 19 I. A., 83]

61. ———— *Devise of one kani out of an estate—Right of selection by the devisee.*—The owner of land, measuring one kani and three-quarters, died, leaving a will by which he devised one kani thereof to the plaintiff who now sued to recover one kani selected by him out of the land in question. *Held* that plaintiff had the right to make his selection and was entitled to a decree. *NARAYANA-SAMI GRAMANI v. PERIATHAMBI GRAMANI*

[I. L. R., 18 Mad., 460]

62. ———— *Domestic servant—Legacy, Suit for—Sirang.*—The testator, a Hindu, made a will in the English form and language, in which he bequeathed (*inter alia*) as follows: "To each of my domestic servants in Calcutta who shall have been in my service ten years and upwards at the time of my death Rs100 for every rupee of monthly salary drawn by them from me respectively." The plaintiff had been in the service of the testator for about forty

WILL—continued.

9. CONSTRUCTION—continued.

years as sirang on board a steamer which the testator kept on the river, and in which he used to visit his zamindaris and perform other journeys by water. The plaintiff was in the habit of daily attending at the testator's residence, and there obeying any orders that might be given him. If the steamer was not needed, the plaintiff used to attend at the testator's residence from early in the morning to about one in the afternoon, returning to take his meals and stop on board the steamer. *Held* that he was entitled to take under the legacy as a domestic servant of the testator. *DHANNO SIRANG v. UPENDRA MOHAN TAGORE* 8 B. L. R., 244

63. ———— *Washerman.*—*Held* on the evidence that the plaintiff had failed to prove he was a domestic servant of the testator, so as to entitle him to take a legacy under this clause. *BHIM DAS v. UPENDRA MOHAN TAGORE* [9 B. L. R., Ap., 4]

64. ———— *Husband and wife—Trustee—Sole use and benefit.*—A testator made the following bequest in his will: "I give, devise, and bequeath to my dearly-beloved wife all the stock-in-trade, furniture, mourning coaches, horses belonging thereto, stones, marbles, tools, implements, and materials connected with my trade and business, and all my right and interest therein; and after payment of my debts and other expenses, I give, devise, and bequeath the rest and residue of my outstandings and collections for her sole use and benefit, with liberty to continue and carry on such trade and business." The testator's widow married a second husband, and they carried on the business of the deceased together. They afterwards separated, and she brought a suit against her husband for a declaration of her right under the will, and for an account from her husband of the profits, etc., of the business during their marriage. *Held* (reversing the decision of the Court below) that, on the true construction of the will, the stock-in-trade, etc., was not bequeathed to the wife for her sole and separate use independent of any future husband; her husband did not become a trustee for her in respect of such stock-in-trade or the profits of the business, and he was not bound to render an account. *ORD v. ORD*

[4 B. L. R., O. C., 53]

65. ———— *Dedication to religious purposes—Rule against perpetuities.*—If there is a valid dedication of premises for religious purposes, this is not invalid merely because it transgresses against the rule forbidding the creation of perpetuities. *BRUGGOBUTTY PROSONNO SEN v. GOOROO PROSONNO SEN* I. L. R., 25 Calc., 112

66. ———— *Charitable bequest—Bequest for spiritual benefit—Uncertainty—Superstitious uses.*—*N E J*, a Hebrew merchant domiciled in Calcutta, and possessed of both real and personal property, died, leaving a will, by which, after appointing his mother, *K E J*, and his brother, *J E J*, executrix and executor thereof, and making various bequests and provisions, he made the following bequest of the residue of his property: "And

WILL—continued.

§ CONSTRUCTION—continued

what may remain after payment of the above-mentioned sums as well as the debts, shall remain under the control of my brothers, S F J and J E J, for the purpose of defraying therewith the expenses for the year, and making charitable distributions as commanded and giving alms for my spiritual benefit according to their judgment." *Held*, assuming that the High Court should act in conformity with the English Court of Chancery in carrying out charitable bequests that, as far as the bequest related to giving of alms for the testator's spiritual benefit, it was void for uncertainty. The "defraying expenses and making charitable distributions" were limited by the bequest to the year within which the testator died. **JUDAH v JUDAH**. 5 B L R, 433

87. *Mortmain, Statutes of—Hospital—Clause prohibiting alienation*—A testator left his personal property to trustees in trust to pay thereout certain annuities to his son and daughter, and, after bequeathing some pecuniary legacies, devised certain immovable property to the trustees in perpetuity in trust for the support of hospitals in the North-West Provinces, with directions that the surplus income (if any) from his personality during the lives of his children, and on the death of either of them

payment of the legacies to pay the annuities to the testator's children, and that the immovable property was greatly in need of repairs and did not produce enough for the support of the hospitals or to enable the trusts of the will relating thereto to be carried out. *Held* that the devise for the support of the hospitals was a valid devise, and one to which the Court would give effect, as being a charitable trust within the scope of 43 E L R, c 4. The statutes of Mortmain not applying to India, the Court will carry out such a trust when the subject is immovable property, just as it would if it had been personal property. *It is also* held that, if the prohibition against sale were a valid one, the Court could not order a sale merely because it would be advantageous to the charity that the property should be sold, but held that the prohibition against sale was void as being repugnant to the devise, and, notwithstanding such prohibition, the trustees had power to sell, or otherwise alienate the property for the purpose of maintaining the hospitals. **AKHOTON v MANN** [14 B. L. R., 442]

88. *Uncertainty—"Surplus"—General residuary bequest*—A testator by his will directed as follows: "I do hereby direct my trustee to find the really needy and poor at the cost of the out of a separate expense out of my estate, to be certified to by the worship of Sukeraj Das, my personal goldsmith. I do direct my trustee to spend suitable

WILL—continued.

§ CONSTRUCTION—continued

sums for the annual weddings or anniversaries of my father, mother, and grandfather as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor; to spend suitable sums for the annual distribution and gifts to the Brahmins for their binding tolls for learning in the country at the time of the Dooorga Pooja; to spend suitable sums for the personal of Mohabharat and Pootan and for the prayer of soul during the month of Kartick. Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class and of the poor Brahmins, and other respectable castes, as my trustee will think fit to comply." *Held* that the gifts were valid testamentary bequests and that the words "should there be any surplus after the above expenditure" created a general residuary bequest. *Held*, on appeal (affirming the decision of the Court below), that a general residuary bequest was created by the concluding word of the clause which would absorb any of the preceding bequests if they should happen to be invalid. *Quere*—Whether the bequests to pundits holding tolls, and for the rains, of the Mohabharat and Pootan and for prayer to God were valid. **DWARKANATH BHASKAR v LAKH DAS PRASAD BHASKAR**. 1 L R, 4 Calo, 443

89. *Cy pres Doctrine*—A testatrix bequeathed the interest of a Government promissory note to "The Calcutta Armenian Orphan" College funds for the relief and support of the Poor Families Widows Orphans and Schools of the Armenian Nation" to be received half-yearly by the wardens of the fund for the time being. Although there was a charity in existence, called "The Armenian Orphan College," there was none in Calcutta or elsewhere answering the description of the Calcutta Armenian Orphan College, but there were two and only two charitable institutions in Calcutta which provided for the relief and enjoyment of the poor families widows orphans, and schools of the Armenian nation. Of these, one, the Church of St. Saviour, did not take money from the public and gave relief to the poor families widows and orphans of the Armenian community; and the other, the Armenian Philanthropic Academy, educated gratuitously the poor and orphans of the same community. The note was executed by order of the Court, and there had been a large accumulation of interest thereon. The governors of the two institutions concurred in selling the note each to receive a moiety of the accrued and future interest of the fund. *Held* that the cy pres doctrine applied, that the note was a valid interest when it was received, but that the accruing interest on the fund should be sold and paid half-yearly, as was done by the wardens of St. Saviour's Church, and the proceeds to be paid to the governors of the Armenian Philanthropic Academy. **THE ARME- NIAN PHILANTHROPIC ACADEMY v THE GOVERNORS OF ST. SAVIOUR'S CHURCH**. 1 M L R, 429

WILL—continued.

9. CONSTRUCTION—continued.

70. ——— Failure of object—*Cy près performance—Construction of will.*—The doctrine of *cy près* as applied to charities rests on the view that charity in the abstract is the substance of the gift, and the particular disposition merely the mode, so that, in the eye of the Court, the gift, notwithstanding the particular disposition may not be capable of execution, subsists as a legacy which never fails and cannot lapse. It cannot be laid down as a general principle that the *cy près* doctrine is displaced where the residuary bequest is to a charity, or that among charities there is anything analogous to the benefit of survivorship, since cases may easily be supposed where the charitable object of the residuary clause is so limited in its scope, or requires so small an amount to satisfy it, that it would be absurd to allow a large fund bequeathed to a particular charity to fall into it. On the failure of a specific charitable bequest, jurisdiction arises to act on the *cy près* doctrine, whether the residue be given in charity or not unless upon the construction of the will a direction can be implied that the bequest, if it fails, should go to the residue. In applying the *cy près* doctrine, regard may be had to the other objects of the testator's bounty, but primary consideration is to be given to the gift which has failed, and to a search for objects akin to it. The character of a charity as being for the relief of misery in a particular locality may guide the Court in framing a *cy près* scheme to benefit that locality. Unless the *cy près* scheme framed by the lower Court be plainly wrong, a Court of Appeal should not interfere with it. MAYOR OF LYONS v. ADVOCATE GENERAL OF BENGAL

[I. L. R., 1 Calc., 303; 26 W. R., 1
L. R., 3 I. A., 32]

71. ——— Charitable gift—*Cy près doctrine—Lapse—Construction of will.*—A testator directed his executor to set apart a sum of ₹7,000 to provide a fund for or towards the education of two or more boys at St. Paul's School, Calcutta, such boys to be natives of Calcutta, of poor and indigent parents, or fatherless children of Armenian or other Christian religion. The testator died in 1867. In 1864 the St. Paul's School, Calcutta, was removed to Darjeeling. In the St. Paul's School, Calcutta, the fees for day scholars and day boarders were ₹8 and ₹10 respectively. In the St. Paul's School, Darjeeling, there were no day scholars nor any day boarders; and the cost of a regular boarder would be about ₹40 per annum. Held that the gift did not lapse, being a general charitable bequest, and that under the circumstances it must be executed *cy près*. MALCHUS v. BROUGHTON

[I. L. R., 11 Calc., 591]

72. ——— Gift—*Cy près, Doctrine of—Lapse of legacy—Costs.*—Under the will of A, who appointed the Administrator-General of Bengal his executor, B had a life-interest in the residue of the testator's estate. B brought a suit against the Administrator-General to have it declared that a pecuniary legacy, given under the will, had lapsed and fallen into the residue. Prior to the

WILL—continued.

9. CONSTRUCTION—continued.

hearing it was agreed between B and the Administrator-General that the costs of the suit should come out of the testator's estate; this agreement was embodied in a consent order obtained on the application of the plaintiff. The suit was dismissed, and this decision was affirmed on appeal. On the question of costs,—Held that the estate of the testator not being before the Court, the agreement as to costs could not be carried out, and that the plaintiff must pay the costs of all parties to the suit. MALCHUS v. BROUGHTON . . . I. L. R., 13 Calc., 193

73. ——— Appointment of trustee—*Failure to carry out wishes of testator.*—Where a testator had made a bequest for charitable purposes and had made no express provision for the management of the charitable trust so created, except by directing that, in the event of his heirs failing to carry out his wishes in respect of the trust fund, the Civil Court should take the fund and the management of the trust summarily into its own hands,—Held that, in the absence of misconduct by the widow, and not the Collector, was the proper person to be appointed trustee. HORI DASI DABI v. SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 5 Calc., 228; 4 C. L. R., 77]

74. ——— Bequest to charity—*Public charity—Trusts affecting land—Perpetuity—Parsi religious ceremonies: baj rozgar, nirangdin, yezashni, ghambar, and dosla—Civil Procedure Code (Act XIV of 1882), s. 527.*—A Parsi by his will directed that the income arising from a one-third share of a bungalow in Bombay, to which he was entitled, should be devoted in perpetuity to "the performance of the baj rozgar ceremonies and the consecration of the nirangdin and the recitation of the yezashni and the annual ghambar and dosla ceremonies." He further directed that the said share should not be sold or mortgaged. Evidence was given, which showed that the above-mentioned religious ceremonies were performed among Parsis rather with a view to the private advantage of individuals than for the public benefit. Held that the trusts of the will were void, and that the direction that the property should not be sold was invalid. LIMJI NOWROJI BANAJI v. BAPUJI RUTTONJI LIMBUWALA . . . I. L. R., 11 Bom., 441

75. ——— Bequest to a person with a direction that it should be used in good works (*sára kám*)—*Direction void as being vague and indefinite—Succession Act (X of 1865), s. 125.*—A testator left a legacy to his wife in the following terms: "₹2,000 to be credited in our shop in the name of my wife Bai Bapi. Interest at 6 per cent. to be paid to her every year. If in her lifetime she demands the money to use in a good work (*sára kám*), it should be given to her, but if she has not taken it in her lifetime, Jamnadas and Bhagubhai are to dispose of it according to their own pleasure after death." Held that this was not a bequest in favour of good works (*sára kám*), but a bequest to the testator's wife, with a direction to use it in good works (*sára kám*), and as that direction was

WILL—continued

9 CONSTRUCTION—continued.

void for uncertainty, she was entitled to the money as if the will had contained no such direction. **BAI HAPI & JAMNADAS HATHIRANG**

[L. R., 23 Bom., 774]

79

Children—Domestic—Rules

for interpretation—Accretions to property from rents—Where a testator has an ascertained domicile, the construction of his will must depend on the law of that domicile; but if no particular law is applicable, the will is to be interpreted by principles of natural justice. In such cases, in applying the rules of Hindu Mahomedan, or English law to the wills of Hindus, Mahomedans, or European Indian Christians

in circumstances, children may be maintained as illegitimate children. Where by the will the income of estates was left to devisees for life, with a gift over of the corpus on their death, and a portion of the income, instead of being divided among the tenants for life, was applied to the purchase of other estates,—Held those estates did not pass to the remaindermen, but formed the absolute property of the tenants for life, and passed to their devisees. **HARLOW & ORDR**

[5 B. L. R., 1; 13 W. R., P. C. 41]

[13 Moore's L. A., 277]

77.

Contingent gift—Putro

prostrati, Meaning of—Absolute estate—A Hindu, B. L. M., died in 1874, leaving a widow, K. A. D., a daughter's daughter, H. D. D., and a brother, R. L. M., with whom he was on bad terms. By his will, which was made on the 9th of August 1870 and at a time when there was no reason to abandon all expectation of his leaving male issue of his own, B. L. M. directed that, in the event of his dying without leaving a son, grandson, or son's grandson, his widow, K. A. D., should take the whole of his estate according to the shastras, and enjoy the profits thereof for her life, and that on her death, in the event of a daughter or daughters having been born to him, then she or they, and on the death of her or them, then her or their son or sons (the testator's daughter's sons) should in like manner take and become the owner or owners of the estate according to the shastras, and that in the event of there being no daughter or daughter's son of the testator living at the time of the death of his widow, then his grand daughter (daughter's daughter), H. D. D., should take the whole estate absolutely from generation to generation.

purpose. The main object of the testator B. L. M. in making this disposition of his property was to enable H. D. D. to take the whole of the testator's estate if she survived the testator's widow K. A. D., and was not then a barren or childless

WILL—continued.

9 CONSTRUCTION—continued.

widow or otherwise disqualified, would take, not a life interest but an absolute estate, to the exclusion of R. L. M. Held also that the words "putro prostrati" had generally the effect of giving the estate given as an estate of inheritance, and did not by themselves necessarily denote that the estate given was to be one devolving to heirs male only. Held also that in case of H. D. D. not surviving K. A. D., or of her being at the time of the death of K. A. D. for any reason disqualified from taking, the estate, then upon the death of K. A. D. the gift to the Government of the revenue in the exclusion of R. L. M. would take effect, and was a good and valid gift. **HON. JAS. DALL & SECRETARY OF STATE FOR INDIA IN COUNCIL**

[L. R., 5 Calc., 229; 4 C. L. R., 77]

78

Gift to children on their attaining 21—Where words of contingency form part of the description of the class of persons to take, as in the case of a gift to those "who shall attain the age of 21," the words must receive their natural construction, and no estate vests in any one till he attains the prescribed age. In such a case there must be something in the context pointing to a different construction, or something in the will inconsistent with the literal construction to justify a Court in adopting any but the literal construction. In the case of words of contingency occurring in the description of the class of persons to take a mere gift over is not sufficient to change their meaning. **HALLIV & HALLIV**

[L. R., 7 Calc., 218; 8 C. L. R., 23]

79

Period of distribution Successorship A. a Hindu, made the following provisions by his will—"I have two sons living, B and C, they and an infant son of my eldest son, the late D and my wife E (four persons), shall succeed to the whole of my estate; these four persons will receive equal shares. If any of these four persons happen to die, which God avert, the survivor of them will receive the estate in equal shares; but if there be a son or a grandson surviving as the heir and representative of the party dying, such survivor shall succeed to his share. If there be a daughter or grand daughter in the female line surviving, such survivor shall receive a share of the property; the expense of the marriage of such female child only shall be defrayed out of the estate," and also provided that "so long as my infant grandson shall not have attained his majority, the whole of my estate shall remain undivided." All the persons named survived the testator. He died they took absolute interests in the shares named, and that the estate became divisible on the life of any of B, C, or my infant grandson. **HALLIV & HALLIV**

[L. R., 5 Calc., 20]

80

Parties to estate in execution—Directions to executor to effect of—A testator, after appointing certain persons to be executors of his will in respect of the whole of his property directed that they should take possession of the whole of his property, a 21 up to the same under

WILL—continued.

9. CONSTRUCTION—continued.

their protection ;" that they should pay out of her estate the charges of interment, etc.; that they should repair four houses annually out of the income thereof, having let them out to hire, and after paying taxes and ground rent divide the proceeds every three months between the testatrix's two sons; that the executors should not give the rents to the creditor, because the bequest of the income to the sons was "not an entire gift to them, but a mere provision for their support." The will proceeded as follows: "Should my son *M* happen to die before the decease of his wife, then I give the share of *M* to his widow *H M*, etc., and after the death of *H M*, should my son *M* not have left any legitimate male child, then I give the above share to my son, *J*, etc. After the death of *M* (and his wife), should he have left legitimate male children, such male children shall in the same manner receive the income once in every three months till they attain the age of 21 years, and then the amount of their share shall be divided into equal portions, and each of them having become the owner of his portion shall receive the same from my executors, but if *H M* die before *M*, and *M* die without having had legitimate male children, then I give and bequeath the shares of my son *M* to my son *J* as a provision for his support, etc. If my sons *M* and *J* die without having male issue, and if their wives, that is to say, *H M* and *C J*, die without having male issue begotten by my sons, then I give my garden, etc., actually and entirely to the sons and daughter of my daughter *G*, begotten by her first husband *G A*, that is, to *A M B* and *N* or in case of their death to their sons and daughters lawfully begotten, or to such of them as shall survive at the time. My said garden shall be divided into equal shares, and each of them having received his share in equal proportion as a legacy from me, shall enjoy the same." *M* and *H M*, his wife, died without having left any children; *J* died in the lifetime of *M A*, and one of the sons of *G* died without leaving children in the lifetime of *H M*. *Held*, firstly, that the direction to the executors to lease the property indefinitely and out of the income to make repairs, pay taxes and ground-rent, and apply the rent to the maintenance of the sons, was sufficient to vest the legal estate in the trustees. Secondly, that such estate was an estate in fee. Thirdly, that the children of *G* took equitable estates in remainder in fee, defeasible in case of their death in the lifetime of the first taker for life, in which event there was substituted a devise to their children in fee. Fourthly, that the children of *G* took as tenants-in-common, and not as joint tenants, and therefore that, as there was nothing from which cross remainders between the children of *G* could be implied, the share of *A* reverted to the heir-at-law of the testatrix. Fifthly, that wherever any estate in fee is devised to a trustee in trust without any limitation of the estate of the *cestui que trust*, the latter takes the beneficial estate in fee. *SHIRCORE v. ADMINISTRATOR-GENERAL*. 1 Ind. Jur., O. S., 50

81. — Gift to children.

—A testator, after providing for payment of debt

WILL—continued.

9. CONSTRUCTION—continued.

etc., directed that the whole of his property should be disposed of and the proceeds placed in the Oriental Bank with power to the executors to invest the same in mortgages, and to leave existing mortgages untouched. The will then contained this direction: "That a monthly stipend of R15 be paid to my daughter *E S* for her own benefit, and R20 for the benefit of her two children (during their minority), and in the event of the demise of any of the said children occurring, the sum of R10 to cease rateably as being the allowance for each child; that on each of the children attaining their age of majority, I request that my executors pay to each of them severally and proportionably the full amount of interest accruing from my estate (the existing provision for my two daughters to continue during their natural life), and after their demise the said interest in like manner to revert to their heir or heirs in succession." *Held*, firstly, that a direction to pay a monthly stipend to *E S* and *M D* respectively was simply a charge upon the testator's estate to pay the said stipends to *E S* and *M D* for their respective lives. Secondly, that *E S* and *M D* were severally entitled during the lifetime and minority of their children to a monthly stipend of R10 in respect of each child, such payment to cease upon the death of each child or on its attaining majority, till which latter event the said children took no interest under the will. Thirdly, each child upon attaining its majority took a share of the residue, proportioned to the number of children then living, and a contingent proportionate interest in the shares of each of the other children which would become vested on the death of each one dying under twenty. Fourthly, the limitation of the gift "during their natural life and after their demise, the said interest in like manner to revert to their heir or heirs in succession," did not prevent the children from taking their several shares absolutely under the will. *Semble*—The rule in *Wild's case*, 6 Rep., 17, is not applicable to personality. *AGNEW v. MATHEWS*

[1 Ind. Jur., O. S., 74; 1 Mad., 17]

82. — Gift over—No

mention of time for the occurrence of specified uncertain event—*Succession Act*, (X of 1865), s. 111, *ills. (d) and (e)*, *Application of*.—A testator by his will bequeathed to one *K* a legacy with the proviso that if "after the expiration of nine years from my death. . . *K* should die without son or grandson, then *M* shall get his (*K*'s) properties." The uncertain event, namely, the death of *K* without son or grandson, did not happen before the expiry of nine years from the testator's death, that is, before the period of distribution. *Held* that where a will fixes the nearer limit of time beyond which the specified uncertain event is to happen, but does not fix either any definite point of time at which or any further limit of time within which that event is to happen, it does not amount to the mentioning of a time for the occurrence of that specified uncertain event. That s. 111 of the *Succession Act* lays down a hard-and-fast rule regulating the

WILL—continued.**9. CONSTRUCTION—continued.**

whereby she appointed executors and bequeathed a certain sum "that the income thereof be given for perpetual masses for the benefit of my soul and for the souls in purgatory," and she also bequeathed, *inter alia*, R42,000 to her granddaughter for life, and provided that in the event of her marrying and having children she could bequeath to them the said R42,000, but in the event of her dying without issue, R14,000 out of the said R42,000 should be subtracted and given to her husband, and the remaining R28,000 should be added to the first-mentioned bequest, and the income thereof be similarly given for masses. The executor with probate gave effect to the first-mentioned legacy. By a settlement made in contemplation of the marriage of the granddaughter, the subject of the second legacy was settled as provided in the will except as to the R14,000, as to which it was declared that in the event of there being no issue of the marriage, and of the wife surviving the husband and dying without marrying again, it should be divided between the residuary legatees of the testatrix. The husband was a party to the settlement, as also was the executor of the testatrix who was one of the trustees of the settlement. The marriage having taken place, a suit was brought by the husband and wife against the trustees, and a decree was passed under which the trustees were relieved of their office, and the trust funds paid into Court with the direction that interest accruing thereon be paid to the wife until further order. The husband died without issue, and subsequently in 1890 the wife died, not having remarried. The Administrator-General of Madras took out letters of administration to administer the estate left unadministered of the testatrix, and the R42,000 above referred to were paid over to him. *Held* by SHEPHARD, J., that the sum of R14,000 by reason of the settlement, but not otherwise, fell into the residue of the estate of the testatrix. *Held* by COLLINS, C.J., and HANDLEY, J., affirming SHEPHARD, J., (1) that the sum of R28,000 formed unadministered assets of the estate of the testatrix; (2) that the bequest for masses was void as infringing the rule against perpetuities. **COLGAN v. ADMINISTRATOR-GENERAL OF MADRAS**

[I. L. R., 15 Mad., 424]

87. *Succession Act (X of 1865), ss. 68, 105, 159—Trust fund to be called after testator's name—Perpetuities, Rule against—Creation of fund, and dispositions except directions for making it a perpetuity, held valid—'Personae designatae,' Bequest to persons as—Vesting of legacy, Time of—Income of fund, Gift of—Tenancy-in-common—Joint tenancy—Advancement out of minor legatee's share for his benefit, Power of—Vested interest, liable to be divested by condition subsequent—Precatory trust, Expression of wish held not to create—Patent deficiency as to objects of bequest—Failure of legacy—Charitable uses, void bequest to.—Where by his will a testator directed the establishment in the Bank of Madras by the executor and trustee of the will, of a fund to be called after the testator's name, the "Garratt Trust*

WILL—continued.**9. CONSTRUCTION—continued.**

Fund," and directed "that such trust fund shall never be removed from deposit in the said Bank of Madras at Madras so long as that Bank shall exist," and "that 'The Garratt Trust Fund' shall be a continuing fund to all time," and that the interest therefrom should be enjoyed by certain legatees and "the same shall be inherited by any child or children of them hereafter from time to time and from one generation to another in accordance with all legal rights,"—*Held* that there was nothing illegal about the creation of this fund, except the direction that the securities representing it should never be received from deposit in the Bank of Madras, which, as an attempt to create a fund in perpetuity, was invalid; but that this did not prevent the intention of the testator to create and endow the fund from being carried out, and that the legatees took an absolute interest. The testator bequeathed "to my grandchildren by my said late daughter *E W*, also to my grandson *F W M* and to his step-brother *G W M*" in equal shares a certain fund. *Held* that this was a bequest to the testator's grandchildren by his late daughter *E W* not as a class, but to them individually as *personae designatae*. *Held* also that, under the terms of the will, the testator's said grandchildren by the late *E W* and *F W M* and *G W M* took vested interests in their respective shares in the said fund from the death of the testator; that the gift to them of "the benefit, interest and profit" of the fund was a gift of the corpus of the fund by virtue of s. 159 of the Indian Succession Act; that they took as tenants-in-common, not as joint tenants; and that under a power given to the executor to make disbursements from the said fund for certain purposes for the benefit of *F W M* in connection with his going to and returning from England the executor was not authorized to apply, towards those purposes, more than *F W M*'s one-ninth share in the said fund, as it was not the intention of the testator to give *F W M* a benefit out of that fund over and above that share, and that the executor, in making disbursements for the purposes specified, was only empowered to trench upon the principal of that share if the income, as applied under the power of disbursement for *F W M*'s support and maintenance in England, were not sufficient. *Held* also that under the terms of the devise in the third and fourth clauses of the will of a certain house and premises to *F W M*, the devisee took on the testator's death a vested interest in that property, liable to be divested in the event of his dying under the age of twenty-one years. *Held* also that under the terms of the devise in the fifth and sixth clauses of the will of a certain house and premises and furniture to the children of the testator's late daughter *E W* (who was dead at the date of the will), there was an absolute gift to the children of *E W* of the testator's whole interest in that property, and that such gift was not controlled by the directions in the latter part of the fifth clause that the house should not be sold until the youngest grandchild attained the age of eighteen years, which must be regarded

WILL—continued.

II CONSTRUCTION—continued.

merely as an expression of the wish of the testator and not as a testamentary trust, and was of no legal effect; and that the children of E H who were living at the testator's death did not take as joint tenants, but took as *persons designators*, each an equal share in the property, which vested in them on the death of the testator, and therefore the share of one of them, E G H, who had survived the testator, but died subsequently, having vested in E G H, passed to F G H's representative, the ninth defendant. In the sixteenth clause of the will the testator directed his executor and trustee out of a certain sum of Rs500 to "disburse various petty pensions to some poor people who have been mentioned to him" (the executor and trustee) "by me."

Reading Rooms for European pensioners and the Poor Widows' Quarters attached thereto being a bequest to charitable uses, was void under s 105 of the Indian Succession Act, as the testator had nearer relatives than nephews, and the will was executed less than twelve months before his death.

ADMINISTRATOR-GENERAL OF MADRAS v. MOVET
[L. R., 15 Mad., 448]

88. — Joint tenancy in fee—Life estate—Intention of testator—Restricted enjoyment, Direction as to—A testator devised his estate should his wife remain his widow, for the general and any wife let that, she have a full life-interest in the estate, and should not be annoyed with any vexation about shares during her lifetime, but that after her death her children and their descendants should take *per stirpes*, and in the event of his wife not remaining his widow and her child or children being living, then the estate should go for the general benefit of his children in equal shares when of the age allowed by law. And in the event of his said wife contracting a second marriage, and his children dying before marriage, and without children and under age, his wife should take half of his estate and the testator's brother the other half, and in the event of the brother dying without children, the testator's wife should take the whole estate. The testator's wife remained his wife until her death, her children having all predeceased her without being married. Held that the intention of the testator by the first devise was to give an absolute estate to his wife and children jointly, and that the remaining clauses of the will were merely intended to restrict its mode in which they were to enjoy the gift. HARRINGTON v. ADMINISTRATOR-GENERAL OF MADRAS. [L. R., 21 Cal., 483]

WILL—continued.

9. CONSTRUCTION—continued.

89. — *Residence—Condition of residence.*—A testator by his will directed that if any of the female members of his family, either from misunderstanding or from any other cause, should live in any other than a holy place for more than three months, except for the cause of pilgrimage, they should forfeit their rights under the will. The plaintiff, a widowed daughter-in-law of the testator, and a minor, was removed from his house by her maternal relatives and brother with the aid of the police, and resided for more than three months with her mother. Held that under the circumstances the plaintiff's share did not work a forfeiture. *Classifying v. Pillay, 7 H. L. Cas., 707, referred to. TIM CORRI DASSEE v. KRISHNA BHABHI. I. L. R., 20 Cal., 16*

90. — *Tested interest—Conditions repugnant—Condition restricting immediate enjoyment—Commission allowed to trustees, Calculation of.*—Where a testator who died in 1826

allowed to enjoy it until the end of the year 1800, and appointed two trustees to carry out his wishes, Held that the son took an immediate vested interest in the estate of the testator. Held also that the condition restricting immediate enjoyment was a condition repugnant and was invalid. *Goring v. Goring, John, 265. Weatherall v. Thornbury, L. R. 8 Ch. Div., 261, followed.* Where commission is allowed to trustees annually, such commission shall be calculated on the income of the estate, and not on the corpus. *LLOYD v. WERN. [L. R., 21 Cal., 44]*

91. — *Absolute gift—Repugnant gift over—Inadequateness of gift—Deputed wife—Marriage, Proof of.*—On the construction of a will which was as follows: "I hereby declare all former wills cancelled. I desire that my wife should obtain possession of all my property and enjoy the benefit of all moneys that may accrue until her death, when I wish that whatever may remain shall be used for the education of the children of the Parsi and Anglo-Indian community. I desire that the will be administered by the Official Trustee of Madras." Held (1) that the deputed wife should take under the will without strict proof of the marriage, so far as being imputed to her in the matter of the Parsi and Anglo-Indian community. I desire that the will be administered by the Official Trustee of Madras." Held (2) that the gift to the wife was absolute and the gift over void for repugnancy. *ADMINISTRATOR-GENERAL OF MADRAS v. WILKIN. I. L. R., 13 Mad., 570*

92. — *Restrictions on legatee—Enjoinder—Legatee's estate.*—Where a testator leaves a legacy absolutely to a legatee, his estate, but reserves the mole of the legatee's enjoyment to secure certain objects for the benefit of the legatee, and where such objects fail, the absolute gift prevails, and does not fail to the residue of the testator's estate. Therefore, where a testator

WILL—continued.

9. CONSTRUCTION—continued.

gave legacies to certain of his grandsons and grand-daughters, but nevertheless declared that such legacies should be held upon trust (as to the legacies to the grandsons) to invest the same and to apply the income during the minority of the legatee towards his maintenance and education, and upon his attaining the age of 21 years to pay him the income during his lifetime, and after his death to pay such income unto the widow of such grandson, and after the death of both of them to transfer the capital unto the child or children of such grandson as being a son or sons should attain the age of 21 years, or being a daughter should attain that age or marry, in equal shares as tenants-in-common; and where the testator especially provided as to the legacy left to one grandson that upon the happening of certain event it should be paid to his other grandchildren.—*Held* that the gift to the grandsons were absolute, and that the subsequent provisions were simply a qualification of the gifts for the benefit of the legatees; and that therefore, upon the death of one of the grandsons unmarried, his legal representative was entitled to the legacy left to him.

ADMINISTRATOR-GENERAL OF BENGAL v. ARCAR

(L. L. R., 3 Calc., 553)

93. — — — Proviso for cessor—*Condition—Conditional limitation—Breach of condition—Residence.*—P. C. T., a Hindu, died living an only son, G. M. T., and having first made his will in the English form, whereby, after declaring that he had already made sufficient provision for his son G. M. T., and that G. M. T. was to take nothing under the will, he gave all his property to trustees, upon trust, as to the personal estate, "to collect and get in the same" with certain specified exceptions, and thereout to pay his funeral expenses and debts, "and such legacies as were not by the will postponed in payment;" and to invest the residue, and out of the annual proceeds of such investments, so far as the same would extend, to pay certain annuities and postponed legacies as they became due, and to pay such surplus income as might from time to time exist to the person entitled to the beneficial enjoyment of the real property or the surplus rents or profits thereof, with an ultimate trust, after all the legacies and annuities had been satisfied, for the person or persons entitled to the beneficial enjoyment of the real property. And as to the realty, upon trust, until all the debt and legacies had been paid, and all the annuities had fallen in, to receive the rents, and thereout in the first instance to pay the unsatisfied legacies and annuities, and to pay the surplus rents to the person or persons for the time being to whom the real estate (subject to the devise to the trustees) was given by the will. And as a first charge on the net income of the real property (after satisfying the expenses of establishments), the testator directed the trustees to pay Rs30,000 per annum to the person for the time being entitled to the beneficial enjoyment of the real property or the surplus income thereof. He further directed them, after all the annuities and legacies had fallen in and been satisfied, to convey the real estate, so far as the then condition of circumstances would permit, unto and

WILL—continued.

9. CONSTRUCTION—continued.

to the use of the person entitled, under the limitations contained in the will, to the beneficial interest therein. The first limitation was to J. M. T. for life. At the end of the limitations of the real estate, the will contained the following proviso: "Provided always, and I hereby declare, if any devisee, or tenant-for-life . . . shall permit or suffer the said property so devised and limited as aforesaid or any portion thereof, to be sold for arrears of Government revenue, or shall, after attaining his majority, cease to keep up in a due state of repair, and to use as his residence in Calcutta, the said baithakhana house and premises where I now reside, and make use of and enjoy my library, horses, carriages, farmyard, furniture in the said house, and jewels, gold and silver plates, etc., in my use or possession, then, and immediately thereupon, the devise and limitations in this my will contained and declared shall wholly cease and determine as to him, and the person next in succession to him under the limitations aforesaid shall at once succeed," as if the person committing a breach of such conditions had then died. The testator died in August 1868. In December 1868 his son G. M. T. instituted a suit for the purpose of avoiding and setting aside the trusts and limitations of the will, except so far as they were for payment of debts, legacies, and annuities. This suit was dismissed on the 1st of April 1869. G. M. T. appealed, and on the 1st September 1869 the Appeal Court declared him to be absolutely entitled to the personalty, subject to the trusts for payment of debts, legacies, and annuities, and entitled, on the death of the defendant J. M. T., the tenant-for-life, to the realty. J. M. T. and others, claiming under the limitations in the will, appealed to the Privy Council; and G. M. T. filed a cross-appeal, in which he claimed that the gift of the life-estate to J. M. T. ought to be declared void. By the order of Her Majesty in Council which was dated the 9th August 1872, and which arrived in Calcutta in September 1872, all the limitations after the limitation to J. M. T. were declared void and inoperative, and it was further declared that J. M. T. was beneficially entitled to a life-interest in the realty, and also in the personalty directed to be conveyed or converted into a fund, subject to the payments in the will directed to be made, and to the provisions in the will not thereby declared to be void; and also until the legacies and annuities fell in and were satisfied, to Rs2,500 a month out of the net rents of the realty, and also to the surplus rents of the same and the surplus interest of the personalty; and that, upon the failure or determination of J. M. T.'s life-interest, G. M. T. was entitled as heir-at-law to the real and personal property. The proviso for cessor was not among the provisions of the will which were declared void. J. M. T. was one of the trustees under the will. After the testator's death, the business of the estate continued, as theretofore, to be carried on in a portion of the baithakhana house; and J. M. T., who had a family dwelling-house of his own, used, up to November 1869, to attend at the baithakhana daily for the transaction of business.

WILL—continued.

9 CONSTRUCTION—continued.

In November 1870 *J M T* quarrelled with his co-trustees, and ceased to go to the bathshana. In April 1870 he demanded from the other trustees that possession of the bathshana should be given to him, and upon their insisting on the right to occupy the portion of the bathshana used for the purpose of the estate business, and their refusal to do so, in July 1870 a decree for possession was made in his favour. The trustees appealed and ultimately, in July 1871 the Appellate Court made a declaration that it was consistent with the trusts of the will that *J M T* should enter into possession, and the trustees were ordered to deliver to him possession of the bathshana, except the portion of the ground floor occupied for the business of the estate. After obtaining his decree, *J M T* found that the bathshana was in a very bad state of repair, and called upon the trustees to have proper repairs executed. On their refusal to do so, except under direction of the Court, *J M T*, in December 1871, brought a suit to compel them to effect necessary repairs; the trustees entered the suit, but in March 1872 a decree was passed directing them to make the repairs. Subsequently repairs were begun, which were completed in October 1872. In a suit by *O M T* alleging that *J M T* had committed a breach of one or more of the conditions contained in the proviso for entry by not residing in the bathshana house and by neglecting to keep it in repair, and had thereby incurred a forfeiture of which the plaintiff was entitled to take advantage, *Held* that the clause containing the provisions for entry and sitting of the estate was intended to come into operation as a whole and not piecemeal, and therefore that, until *J M T* came into full beneficial enjoyment of the life-estate given him by the will, or at all events until he became entitled to the surplus rents the time had not arrived when that clause was intended to apply. *Held* further that assuming that such time had arrived, the action of the plaintiff, in continuing the right of *J M T*, under the will, to occupy the bathshana house and premises, barred him from claiming that effect should be given to the clause of forfeiture for non-residence. Taken apart from any action by the plaintiff, the conduct of the trustees in depriving the right of *J M T* to possession of a portion of the bathshana house, and refusing to repair, would suspend the operation of the forfeiture clause until October 1872, inasmuch as it prevented him until that time from obtaining such a possession as was contemplated by the forfeiture clause. The

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TAGORE 12 B. L. R. 1

On appeal to the Jury Council.—*He'd that*, as the clause provided for the case and determination of the life term of J. M. T. in the event of the covenants in it not being performed, his interest, so with and on the condition a over had been declared to be void, would cease when that event happened.

WILL—continued

II CONSTRUCTION—continued

Held that the clause could not be construed so as virtually to defeat it and therefore it must be held to be operative before the trusts of the will were at an end, and J M T's estate perfected by a conveyance. But held on the evidence that there had been no breach of the condition contained in the clause. The delay in not acting before October 14/2 was not unreasonable. Where a condition of residence, no manner or period of residence is prescribed but residence simply and without definition, exclusive residence is not supposed to be meant; in such cases the occasional use of a house and keeping an establishment in it with the intent of occasionally using it as a residence is a sufficient compliance with the condition. **GLAUCO MONTI TAYLOR**

[14 B L R. 60: 23 W R. 377
L R. 1 L A. 357

94 _____ Power of appointment—

Exercise of power—Marriage settlement.—A testator after leaving certain specific bequests, directed of his property as follows: "I request that the interest of my property invested in Government securities be disposed of from time to time as follows: First to my dear son A two shares to my two dear daughters B and C, each one share; the 1st term to be paid to them quarterly or half yearly as may be most convenient; I would likewise that these shares shall not be transferred down, in their lifetime. Third at the death of any of my children I would leave to any such share to be divided in the above proportion to the survivors. Fourth, in the event of issue, they may bequeath the share to any one of their children they may see fit and so to the above continue." In March 1844 and by a settlement made in consideration of the marriage of the testator's daughter was assumed to be assigned to trust for upon certain trusts. In 1845 C and her husband made the following joint will: "We do here constitute the executor of us to be executor or executors in our estate and so on behalf of the same to (or with the child or children of the said A or B or C) C died shortly after the execution of the above will leaving no child. In suit by the said A and the trustees of the settlement of 1844 for the execution of one of the testator's wills for the execution of his will.—Held that the settlement of 1844 could not operate upon the share in respect of the directions of the testator that it should not be transferred in the lifetime of C and that the plaintiff took no gift of the settlement. Held also that the power of appointment given by the will of the testator had not been properly executed by the plaintiff and that the child of C took the whole of her mother's share. **FRANKS v. BURNES**

II L. R. & Calc., 511

05 — G. of 10000

for life with power to appoint. Total duration of appointment - 61 years in default of appointment - 61 years of course equally between two ages and then to next of kin - 61 years to be divided and a share to be given to each of the children of the first of the children etc. out of the children of the first of the children etc.

WILL—continued.

9. CONSTRUCTION—continued.

balance of such income to his daughters, C and J, in equal moieties, and after their death "to the use of such of the issue only of the said C and J as they should respectively appoint, such appointment to affect their own respective moiety only and not that of the other of them," and in default of appointment on trust to sell the house and divide the proceeds as directed in the will. *Held* that each daughter took half the house in question for her life with power to appoint it among her children as she thought fit. Even if the power to appoint had been invalid, the gift over on default should be upheld, on the authority of *Peacock v. Prigunt*, L. R. (1893), 1 Ch., 54. A Parsi testator by his will bequeathed the residue of his moveable property to his executors in trust out of the income thereof to apply the sum of Rs 50 for the maintenance of his son B until he should attain 21 years of age and to invest the surplus of such income in Government securities, which should be added to the original corpus of his moveable property for the benefit of his said son B, and upon his attaining the age of 21 to pay over to him "the whole of the interest, dividends, and produce only of the corpus of the whole of the moveable property," and after the death of B in trust to divide the said corpus of the moveable property with all its additions and accumulations among the next-of-kin of the said B. By a codicil subsequently executed the testator directed that the above bequest should extend and be applicable to his son N, and that the executors should divide the income of the moveable property between B and N instead of giving the whole to B. The Court was of opinion that, under the will and codicil, B and N were each to have a moiety of the income for their respective lives, and that on their death one moiety of the corpus was to go to their next-of-kin. The Court, however, declined to make a declaration to that effect, as B, who at the date of suit was unmarried, might afterwards marry and have children, who would not be bound by a declaration made in this suit. *BYRAMJI JEHANGIR LAMSA v. RATNAGAR JAMSETJI RATNAGAR*. I. L. R., 18 Bom., 1

96. ————— *Request of power of management to widow and daughter for life—Estate—Gift to two persons as joint tenants or tenants-in-common.*—N W, a Parsi, died in 1843, leaving a widow A and a daughter M and two grandsons (sons of M) him surviving. By his will (written in the Gujarati language) he directed that during her life his widow and daughter were "to agree together and to manage the affairs with unanimity," and after A's death he gave the whole power over his estate to his daughter M "and so long as M enjoys her natural life, everything is to remain with her." The will then continued: "After the death of M—M has two sons, namely, Bhai Navroji and Bhai Nusserwanji—these two boys are the owners of whatever property and estate there may be belonging to me. They are considered as my children. No one is to offer them any hindrance or impediment. I have presented all to my wife and to my daughter, M." *Held* (confirming

WILL—continued.

9. CONSTRUCTION—continued.

FULTON, J.) that A and M took only a life-interest in the estate. (2) (Varying the decree of *FULTON, J.*) that M's two sons took the estate as joint tenants subject to the life-interests of A and M, and not as tenants-in-common. *NAVROJI MANOCKJI WADIA v. PEROZHAI*. I. L. R., 23 Bom., 80

97. ————— *Gift in remainder expectant on termination of estate for life—Devise of talukh—The Oudh Estates Act, I of 1869—Registration—Acceleration of remainder on failure of life-estate.*—A gift in remainder expectant on the termination of an estate for life does not fail, but is accelerated by reason of gift of such prior life-estate not taking effect. The principle of the decision in *Lainson v. Lainson*, 5 De Gex, M. & G., 753; 18 Bear., 1, held applicable to a will made by a Hindu testator. A talukhdar, whose talukh was entered in the third of the six lists prepared in conformity with s. 8 of "The Oudh Estates Act," I of 1869, devised his estate by a will, which was not registered to one of his wives for life, and after her death to his younger son by her. *Held*, as a consequence of the above rule, that it was not necessary to decide, upon a claim by the elder son as heir-at-law, whether the widow, as a person "who would have succeeded to an interest" in the talukh, if the talukhdar had died intestate, would have been within the exception, in reference to the effect of non-registration of will contained in s. 13 of the same Act. *AJUDHIA BAKSH v. RAKMAN KUAR*

[I. L. R., 10 Cal., 462; L. R., 11 I. A., 1

98. ————— *Vesting of interest—Directing—Executory trust.*—H, by his will, bequeathed to his daughter A M H, "on her attaining her 18th year, the sum of Company's Rs 10,000, with any interest that may have accrued thereon, if she marries, to be settled upon herself and children solely; should she die unmarried, her money to be equally divided between her brothers; and if either of them die, the whole of deceased's money to go to the survivor." *Held* that A M H (who had attained her 18th year) had a vested interest in the legacy subject to be divested upon her dying at any time unmarried, and further, subject to an executory trust in favour of her children in the event of her marrying at any time, and therefore that she was not entitled to have the capital of the legacy paid to her. *IN THE MATTER OF THE WILL OF HUNTER. IN THE MATTER OF ACT XXVIII OF 1866*

[I. L. R., 4 Cal., 420

99. ————— *Interest not subject to be divested.*—A testator nominated A B, etc., "to be executors and trustees of this my will, and eventually guardians of my dear children and estate, until such time as my children shall severally attain the age of 25 years, when I request the aforementioned gentlemen (my wife being dead), their heirs or executors, will divide, or cause to be divided, into shares agreeably to the number of our surviving children, giving to the boys two shares and to each of the girls one, or to their lawful issue or husband, the whole of my estate, each child to be put in

WILL—continued.

9 CONSTRUCTION—continued.

possession of his or her share when they shall respectively attain the age of 25 years; and whenever either of my daughters shall enter into the holy state of matrimony, I request that a proper settlement may be made upon her and her children, and in the event of either of my children departing this life without leaving husband, wife, or lawful descendants or her share shall be divided equally amongst my other children or their lawful issue; but on no account shall any division of the principal of my estate take place till after the death of the mother. *Held* (reversing the decision of PHIBBS, J.) that after the mother's death, each child took a vested interest on attaining the age of 25 years,—that is, at the time when possession is to be given—and not an interest subject to be divested in the event of the child dying without husband, wife, or lawful issue. TAYLOR v. PHILLOTT. PHILLOTT v. MORRIS. 1 Ind. Jur., N. S., 376

100

Dwelling clause

—Gift over on legatee's death "prior to death" of the estate—Gift not void for uncertainty—Act of 1868 (Succession Act), ss 75, 91, 106.—A testator directed his trustees and executors to hold his real and personal estate upon trust to sell the real estate either together or in parcels, and either by public auction or private contract, and to call in, sell, and convert into money such part of his personal estate as should not consist of money, and to divide the said moneys, and the real money which might be long to such estate, amongst the several persons named in the schedule to the will, and to pay the same to them in the shares and proportions therein mentioned, as and when they should respectively attain the age of 21 years in the case of males or, in the case of females, when they should respectively attain the age or marry. He directed that, in the event of any of such persons dying, in his lifetime, or at any time thereafter "prior to the said division," leaving lawful issue, such issue should be entitled to the share which their deceased parent would have taken. One of the legatees who had attained the age of 21 years at the testator's death died five months after him, before payment of the legacy, and left lawful issue. *Held* that the legacy vested in interest in the legatee at the testator's death, but that the legatee having died prior to the division of the estate it became divested, that the "division" of the testator's estate meant, in the will, the attainment of the several legatees to the share of each legatee, after the conversion of the estate into money; and that the gift over in favour of the legatee's issue was not void for uncertainty, but took effect. *Johnson v. Crook*, 1 J. 12 CA D, 634; *Collins v. Farler*, 1 J. 12 CA D, 634; *Hobbs v. Fotherick*, 1 J. 12 CA D, 51; *Kaitum v. Deogo*, 1 J. 12 CA D, 21; *Spencer v. Fotherick*, 1 J. 12 CA D, 634, referred to. *Barman v. Barman* [L. R., 6 All., 663]

101.

Request to

organism in Military Orphan Asylum—Request to trustees.—A special case was stated for the opinion

WILL—continued

9 CONSTRUCTION—continued

of the Court as to whether S M took a vested interest in the sum of £100 under the following clause of will: "I will to the M O Society £100 for S M and invested £100, the interest on which I directed to be paid to the mother of S M. Now I direct my trustees after the death of the mother of S M, to realise the latter sum and pay it to the M O Society, for S M in terms of the regulations of the Society." *Held* that the bequest was *provisory* for the benefit of the daughter. That having regard to the regulations of the M O Society, the bequest was a gift for the benefit of the Society generally. That if the will had given the mother the interest for life, instead of saying it had been given, it would have vested. That the interest vested in S M at once and formed part of her estate. IN THE MATTER OF THE GOODS OF COLLINS.

[Hourke, O C., 104]

102.

Gift of life

interest or corpus—Discretion of executors to hand over corpus—Costs.—C, a Portuguese Indian of Bombay died in April 1844 leaving three sons, M, N, and J (defendant No 3) and two daughters, I and C. By her will she directed that her daughter F should enjoy the rents and profits of a certain immovable property for her life, and that after her death the said property should be sold and the sale proceeds (after payment of two legacies thereon) be divided equally between her two sons M and J. The seventh clause of the will was as follows: "I further direct that the amount which may fall to the share of my son Joaquim Amador Bocarro under (2) of paragraph 6 above should be held in trust by my executors hereinafter named and converted by them into government securities; the interest accruing therefrom should be paid for the maintenance of my said son Joaquim Amador Bocarro. Should my said son die leaving a widow or issue, his share shall be given to such widow or issue according as he may desire and bequeath. Should my said son Joaquim Amador Bocarro reform himself, and take off all his evil tendencies and lead a steady, quiet, and orderly life, he should be on account of illness or other reasonable cause, be in urgent need of pecuniary assistance, I leave it to the discretion of my executors whether to make over to my said son Joaquim Amador Bocarro for his absolute and sole use the amount which he may be entitled to under (2) of paragraph 6 above or such part or parts thereof as to my executors may appear proper." C died in 1852, unmarried and intestate, leaving his two brothers M and N and his two sisters I and C living. C died in 1857 leaving a widow and children. In 1857 J died, and all his interest in the estate fell to the plaintiff. To secure a loan of £100 in 1857 C died, and in 1859 C died. On account of the executors were proceeding to sell the property mentioned in the will when the plaintiff died. The plaintiff claimed for a declaration that they had no estate upon J's interest therein, and that the interest should be ascertained and divided between the plaintiff and the defendant. The defendant claimed that the property should be sold and the proceeds paid out of the estate, that

WILL—continued.

9. CONSTRUCTION—continued.

the executors should be restrained from selling, save subject to their (plaintiffs') rights, etc. The plaintiffs and *J* contended that he (*J*), in the event that had happened, was entitled to the whole of the proceeds of the property absolutely, and that the gift in the sixth clause of the will could not be cut down by the provisions of the seventh clause. *Held* (1) that the defendant *J* had no interest in the house mentioned in the will. He was only entitled to a share of the proceeds after it had been sold. (2) That his interest in his share of such proceeds was merely a life-interest, with power to appoint to his widow or issue, and that he was not entitled to be paid the corpus of such share, but that the executors might, under certain circumstances and at their discretion, hand over to him the said corpus. (3) That neither the plaintiffs nor *J* could interfere in the sale of the said property. (4) That the plaintiffs had a valid charge upon *J*'s interest in the sale-proceeds of the said property to the extent of their mortgage. (5) That *J*'s interest was (after deducting the legacies given by the sixth clause) an absolute interest in one-fourth share of *S*'s moiety and a life-interest in his (*J*'s) moiety, subject to the contingency of the executors in their discretion handing over the corpus of the share, or part thereof, for his absolute use, in which event the plaintiffs had the right to the same so far as their debt was unsatisfied. (6) As to costs, the plaintiffs and third defendant *J* should pay their own costs; that the executors and defendants Nos. 4 to 12 should have their costs paid out of *J*'s share in *S*'s moiety of the sale-proceeds, and if that fund were not sufficient to pay such costs, the plaintiffs and the third defendant *J* to pay the deficiency. *BECHAR AKHA v. DE CRUZ*. I. L. R., 19 Bom., 221

Held in the same case on appeal, confirming the decree of the lower Court, that under the above clause of the will there was a clear gift to the wife or issue of *J*, but that *J* was to have the power of designating how they were to take. To that extent the absolute gift to *J* was qualified. Should the gift over fail, the absolute gift to *J* would remain unimpaired. *Held* as to the costs (varying the decree of the Court below) that the executor's costs taxed as between attorney and client, be paid out of the estate as well as the costs of the defendants 4 to 12. Plaintiffs and *J* to bear their own costs respectively: plaintiffs to be at liberty to add their costs to their mortgage-security. In other respects the decree of the lower Court to be confirmed with costs other than the costs of defendants 4 to 12 whose costs may be added to their costs in the Court below. *BECHAR AKHA v. DE CRUZ*. I. L. R., 19 Bom., 770

103. — Request to ex-

ecutors and trustees in trust for son of testator and his widow—Life-interest—Estate in fee—Control and management of executors and trustees.—A Hindu by his will bequeathed certain property to his executors and trustees "upon trust for my son *T* and his heirs from the time of my death to allow him to occupy and use the same, and to enjoy the income thereof, and after the death of my son *T*, in trust to allow his widow to occupy and use the same and

WILL—continued.

9. CONSTRUCTION—continued.

enjoy the income during her life; but if the said *T* shall die without having male issue him surviving, then in trust after the death of the survivor of them without leaving such male issue to my son *T* and his heirs according to the rules of Hindu law." The sons *T* and *P* both survived the testator, and *T* had a wife and three sons living at the date of suit. In a suit by the executors and trustees against *T* for construction of the will, *T* contended that, under the above clause, he was absolutely entitled to the property subject to the interest of his widow for her life. The plaintiffs contended that *T* had only a life-interest in the property. *Held* that the defendant *T* took only an interest for life in the property. The words "in trust for *T* and his heirs," which, standing alone, would give the property in fee, were to be read with the words immediately following, which showed a clear intention that *T* should only take a life-interest, to be followed by the same interest in his widow, after whom the heirs of *T* would take as purchasers. *Held* also that the trustees were intended to take the legal estate and to have the control of the property, allowing *T* to enjoy the income of it. *SMITH v. TRIBHUVANDAS MANGALDAS*

[I. L. R., 19 Bom., 401]

104.

— Request to wife with obligation of maintaining and educating children.—Interest taken under such bequest.—*B* died in 1891 leaving a widow (defendant No. 1) and two sons, *P* and *D* (defendants Nos. 4 and 5). By his will he bequeathed the residue of his property to trustees (of whom his widow was one) in trust to pay the rents and income thereof to his widow for life, "she thereto maintaining, educating, and bringing up" his children in a manner suitable to their degree in life. After his death, the property, moveable and immoveable, was to be divided among his sons equally when *D* should attain the age of twenty-five. He attained majority in October 1895. At the date of suit *D* was eighteen years old and *P* was twenty-five. It was contended that the widow was only a trustee of the rents for the benefit of her sons *P* and *D*. *Held* that under the will the widow took a life-interest in the rents subject to the obligation of maintaining, educating, and bringing up the children. The only two surviving children (*P* and *D*), having attained majority and having received property under the will of an uncle, were now no longer in need of being maintained by the widow. The obligation imposed upon her therefore by her husband's will was discharged, and she was now entitled to a life-interest free from all further obligation to maintain his children. *NATHA KERRA v. DHUNDANI*

[I. L. R., 23 Bom., 1]

105.

— Trust—Creation of trust—Uncertainty.—A Hindu by his will, after appointing certain persons executors for the purpose of managing his estate after his death, gave them the following directions: "You should give my brothers, their wives and children, according to your wishes." *Held* that no trust was created by these words. *KUMARASAMI v. SUBBARAYA*. I. L. R., 9 Mad., 325

WILL—continued.

9 CONSTRUCTION—continued.

108. ———— *Validity of trust*
Direction as to debt due from attesting witness—

the children of such attesting witness—*Held* that there was no release of the debt or legacy to the attesting witness, but a valid trust in favour of the children. ADMINISTRATOR GENERAL v. LAZAR

[L. R., 4 Mad., 244

107. ———— *Precatory trust*
W. R. by his will made the following gift to his wife, *M. A. R.*: "I give to my dearly beloved wife the whole of my property both real and personal

HIGH COURT that she took under her husband's will a life interest only in his property with a power of appointment in favour of the children, and that the shares belonged to *A. C. R.*, and could not be sold in execution of the decree as part of the estate of *M. A. R.* HAYTON v. MESSOURIS HANE

[L. R., 3 All., 65

Held by the Privy Council reversing the decision of the High Court, that the widow took an absolute interest in the property, and that no trust for the benefit of the children was created. In order to create a precatory trust, the words must be such that the Court finds them to be imperative or the first taker of the property; and the subject of the gift over must be well defined and certain. MESSOURIS HANE v. HAYTON

[L. R., 4 All., 500; L. R., 9 I. A., 70

108. ———— *Expression of wish—Request.*

made her principal legatee: "I direct *A. A.* under this will, to pay every month Rs 14 7-8 (being one third of Rs 933 5-8 my monthly pay allowed by the Government for notes, which are deposited) to my dependants and personal servants as detailed below.

It is known that the expenses of the household, etc., will be continued for ever; and also the pay of *G. K.* and *M. A.* will be defrayed for ever, as a gratification after generation. The rest of the servants will be paid for life only." *Held* that these words constituted a bequest and were not merely the expression of a wish. Also that the bequest was not one of a fixed payable out of a specified sum and to others; the payment that the monthly paymaster was to be made amounted to one third of the sum received monthly by the testatrix not

WILL—continued.

B. CONSTRUCTION—continued.

limiting the source of the legacy. *TELEMAN KADA v. DOKAR ALI KHAN*

[L. R., 8 Cal., 1; L. R., 8 I. A., 117

103. ———— *Will confirming trust-deed*
Construction of deed—Forfeiture.—*Dealing* various of securing and settling his property, executed a deed of trust whereby he conveyed and assigned all his real and personal property and its trustees, among (among them) the following trusts: that immediately after his death the trustees should convey, assign, transfer, and make over all the premises mentioned in the deed unto such person or persons as he should, by his last will, attested by two witnesses, direct and appoint, and in default of such direction a legal interest, unto the next heirs of his heirs and assigns, for ever, and in the meantime to pay the Government revenue out of the rents and profits of the real property, and employ the residue and accumulations of the personal property in such a manner as may procure the daily worship of the household deities mentioned in the deed and pay what they considered a fair and proper sum to the wives and family of his living at his death and residing in the family dwelling-house. By his will dated the same day as the deed, he declared that he ratified and confirmed the deed, subject to such provisions as were contained in his will. It was held that the trustees should not charge the fund for the maintenance of those who should not live in the family dwelling house and for the appointment of new trustees. *Held*, first, upon the authority of *Wells v. Pigott 2 Ves. Jun.*, that the powers of the trustees (under the deed) did not cease on the death of *A.*, and that the direction given in the will attached not strictly within the words amounted to a good appointment in equity so that interest of the trustees of the deed conveying the property on the death of *A.* to his sons they should contribute to his share in the trusts of the deed as would be by the will. Secondly, that the words "in such a manner as may procure the daily worship" etc., meant in such manner as shall be ascertained to be the daily worship etc., and that the trustees were not authorised to apply such portion of the trust funds as they in their discretion might think fit, but only such portion as was reasonably and clearly for those purposes. It was held that the words are not chargeable on property forfeited upon conviction of felony. *HEERABHAI BHOWBERE v. BHOZO*

[Ind. Jur., O. R., 80

110. ———— *Gift of residue to a class—*

Postponement of gift of residue to a class— *Interests—Succession Act, 1865, s. 101, 102, 103.*—*Testator* gave his real and personal estate in trust upon trust to receive and to pay, to or for the use of the same unto between, or among the children of my brothers *A.* and *B.* respectively, to be paid transferred to, and divided among them in the proportion of $\frac{1}{3}$ and the share hereinafter mentioned, that is to say, the share of each of every one of my said two brothers of all be due to each of each and every daughter and the share of each son shall be paid to him or them respectively upon his or their attaining the age of 21 years, and the share of each daughter to be paid to

WILL—concluded.**9. CONSTRUCTION—concluded.**

her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters." The testator left him surviving his two brothers and a sister, C, A and B, both died before the eldest of the testator's nephews or nieces attained 21 or married. In a suit instituted by the widow and executrix of A to have it declared that the above bequests were valid under ss. 101 and 102 of the Succession Act, and the testator died intestate as to the residue of his estate, and that she as executrix of A was entitled to receive a one-third share of the said estate and the accumulations thereof,—*Held* that the legatees took vested interests subject to be divested on death before the contingencies mentioned in the will happened; that the period of distribution alone was postponed; and that the bequests were valid. *See also*—S. 98 of the Succession Act applies only to vested interests. **MASEYK v. FERGUSON** [I. L. R., 4 Cal., 304

111. ——— *Postponement of period of distribution—After-born child, Share of—Lapsed legatee—Succession Act, s. 98.*—A testator gave his residuary estate to trustees upon trust, to invest and "to pay, transfer, or divide the same unto, between, or among the children of my brothers A and B respectively, to be paid, transferred to, and divided among, them in the proportions and at the times hereinafter mentioned, that is to say, the share of each and every son of my said two brothers shall be double that of each and every daughter, and the shares of each son shall be paid to him or them respectively upon his or their attaining the age of 21 years, and the shares of each daughter to be paid to her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters." After the death of the testator, and before the period of distribution arrived, a son was born to B and one of the sons of A died intestate and unmarried. *Held* that the after-born son of B was entitled to a double portion as one of the male children of the testator's brother, and that the share of the son of A was divisible among the surviving male and female children in equal shares. **MASEYK v. FERGUSON** I. L. R., 4 Cal., 670

112. ——— *Residuary estate of moveable and immoveable property—Claims to, against executors and trustees.*—If a testator appoints persons to be his executors and trustees, and directs them to do certain acts which can only be done by the owners of his residuary estate, the trustees will take that estate, though there be no express device to them. **TREPOORASOONDERY DOSSEE v. DEBENDRONATH TAGORE** I. L. R., 2 Cal., 45

WILLS ACT (XXV OF 1838).

——— **S. 3—Application of Act—East Indians domiciled out of the jurisdiction of High Court.**—The Wills Act. XXV of 1838, applied to the wills of East Indians, whether domiciled within or

WILLS ACT (XXV OF 1838)—concluded.
beyond the testamentary jurisdiction of the Court. **HOGG v. GREENWAY** 2 F

Held, on appeal, the Wills Act only applied if the High Court had an exclusive jurisdiction analogous to that of the Ecclesiastical Court in England. It did not apply in the case of a person who was not entitled by birth or domicile to have applied to him the actual law of England. Therefore the Act did not apply to the case of an East Indian (the illegitimate daughter of a Mahomedan) who resided and died outside the limits of the High Court's civil jurisdiction of the Court. **GRANT v. HOGG**. **HOGG v. GREENWAY** [Bourke, A. O. C., 111: C

WINDOWS OR DOORS.**——— Suit to close—**

See CASES UNDER JURISDICTION OF HIGH COURT—PRIVACY, INVASION OF.

See RIGHT OF SCIT—PRIVACY [I. L. R., 18 Mac

See TRESPASS—GENERAL CASES. [3 B. L. R., A.

WITHDRAWAL OF APPEAL.

See APPEAL—OBJECTIONS BY RESPONDENT [I. L. R., 17 A

See EXECUTION OF DECREE—APPEAL FOR EXECUTION AND POWERS OF COURT [I. L. R., 15 Bom

See PACER SUIT—APPEALS. [I. L. R., 18 Bom

WITHDRAWAL OF APPLICATION FOR EXECUTION.

See EXECUTION OF DECREE—APPEAL FOR EXECUTION AND POWERS OF COURT [I. L. R., 12 All., 17
I. L. R., 17 A
I. L. R., 22 I
I. L. R., 18 Cal., 462. 5.
I. L. R., 15 Mac

See LIMITATION ACT, ART. 179—APPEAL FOR EXECUTION. [I. L. R., 23 Cal

WITHDRAWAL OF CRIMINAL PROCEEDINGS.

See MAGISTRATE, JURISDICTION—WITHDRAWAL OF CASES.

See POSSESSION, ORDER OF COURT AS TO—TRANSFER OR WITHDRAWAL OF PROCEEDINGS. [I. L. R., 22 Cal

WITHDRAWAL OF SUIT

See APPELLATE COURT—EXERCISE OF
POWERS IN VARIOUS CASES—PLAINT

[I. L. R. 8 All. 181
L. R. 131 A. 131

See APPELLATE COURT—OBJECTIONS TAKEN
FOR FIRST TIME ON APPEAL—SPECIAL
CASES—WITHDRAWAL OF SUIT

[L. R. 3 All. 528

See COMPROMISE—REMEDY OF NOT FOR
FORNANCE OF COMPROMISE

[Agra, F. R. 1

See DEKRAV AGRICULTURISTS' RELIEF
ACT, s 13 . I. L. R. 12 Bom. 684

See DIVORCE ACT, s 15

[9 B L. R. Ap. 6
I. L. R. 25 Cal. 223

See MULTIFARIOUSNESS

[I. L. R. 10 All. 270

See PRACTICE—CIVIL CASES—AFFIDAVITS

[3 Bom. O. C. 55

See PRACTICE—CIVIL CASES—WITH-
DRAWAL OF SUITS ON APPEALS COR.

[I. L. R. 7 Bom. 237

See RELINQUISHMENT OR OMISSION TO
SUE FOR PORTION OF CLAIM

[I. L. R. 1 All. 321

I. L. R. 10 Mad. 100

I. L. R. 17 All. 53

See RES JUDICATA—RELIEF NOT GRANTED

[I. L. R. 21 Cal. 265

Order allowing—

See APPEAL—DECREE

[I. L. R. 8 All. 83

I. L. R. 18 Cal. 323

I. L. R. 15 All. 180

I. L. R. 10 All. 10

I. L. R. 17 All. 97

See APPEAL—ORDERS

[I. L. R. 6 All. 211

See SUPERINTENDENCE OF HIGH COURT
—CIVIL PROCEDURE CODE s 62

[I. L. R. 11 Mad. 323

I. L. R. 15 All. 100

Power to allow—

See SMALL CAUSE COURT, PRESIDENCY
TOWNS—PRACTICE AND PROCEDURE

—REFERENCE TO HIGH COURT

[I. L. R. 21 Cal. 120

It was formerly held in some cases that the power
to allow withdrawal of suits given by the Civil Pro-
cedure Code (s 97 of Act VIII of 1859) was not
applicable to suits under the Rent Act, 1859

ROYAL CHANDER CHAKRA & DWARKANATH MISHRA
[Marsh, 148: W. R. F. R. 47

1 Ind. Jur. O. S. 41: 1 May, 347

MOHOO MOHON MULLIK & PAPER COWLEY
MULLIK . . . 7 W. R. 303

WITHDRAWAL OF SUIT—continued

BEER CHANDER JOSEPH & TANIKER CHAND ROY
[11 W. R. 46

HANAYATH DUTT & JOTIKISNEY MOONCHURN
[11 W. R. 3

In other cases rent suits were held not to be ex-
cluded. RAM CHARAN DUTTA & HARTY

[2 B. L. R. 8 N. 11. 10 W. R. 373

WOOMAYATH ROY CHOWDHRY & SURENATH
SINGH . . . 15 W. R. 100

Since the Bengal Rent Act, 1859 however the pro-
cedure in rent suits has been, and is now the same as
in any other suits.

1. Sanction for fresh suit—*Act VIII of 1859, s 97* Civil Court Act s 97 was to
sanction the bringing of a fresh suit, except under
s 97, Act VIII of 1859. ANJOO SINGH & HER
HEA SINGH . . . 14 W. R. 473

AYUD MOHAY PAUL CHOWDHRY & RAM KISHAY
PAUL CHOWDHRY GONIND CHOWDHRY PAUL
CHOWDHRY & HANIKISNEY PAUL CHOWDHRY
[2 W. R. 297

2. Leave to one of several co-
plaintiffs to withdraw—*Consent of co-plaintiff*
—*Civil Procedure Code, 1877 s 373*—The provis-
in the third clause of a 373 of the Code of Civil
Procedure does not deprive the Court of power to
permit one of several co-plaintiffs to withdraw uncondi-
tionally from a suit, even though the co-plaintiff is
not consent to his withdrawal. MOHAMMAD
CHOWDHRY & DEBBOA CHAND BHANA
[9 C. L. R. 332

3. Withdrawal with consent
of defendant—*Civil Procedure Code, 1877 s 97*
—*Right to bring fresh suit* A plaintiff filed a
plaint for an account to be taken. The plaintiff
withdrew the plaint, without the permission of the
Court to withdraw from the suit with liberty to
bring a fresh suit. This was done for the purpose of
a submission to arbitration under a deed mutually
executed between the plaintiff and defendant. The
deed was not acted on. Held reversing the deci-
sion of Macpherson J., that the plaintiff was not
debarred by s 97 of Act VIII of 1859 from bringing
a fresh suit to establish the agreement for reference
to arbitration and also for the account, which was a
suit to which he was entitled. The deed was only
applied to cases where the plaintiff withdrew from
the suit without the consent of the defendant.
J. JOSEPH & CHATTERJEE & WATSON & CO
[Bourke, A. & C. 162

4. In Court below . . . Bourke, O. C. 250

4. Withdrawal of claim under
s 230, Act VIII of 1859 *Right to bring fresh
suit*—In a suit to recover the possession of
land of which the plaintiff had been dispossessed
in execution of a decree against the first defendant,
it appeared that the plaintiff had applied within one
month from the date of his disposssession to the Court
from which the process of execution had issued under
s 230 of the Code of Civil Procedure, a title, up to
this, and it was numbered and entered as a suit

WITHDRAWAL OF SUIT—continued.

had referred their differences to arbitration, and an award had been made in favour of the defendant and had been set aside, and an application for revision of the order setting it aside had been refused, on the ground that the matter could be made the subject of appeal from the final decree in the suit, permission to withdraw the suit and bring a fresh one should not have been granted. The minor defendant might be seriously prejudiced by such a course, and the suit had not abated against him by the death of K, while on the other hand a decree in the suit, if in his favour, would decide the litigation, and, if in favour of the plaintiff, would not prevent his bringing a suit for possession on the separate cause of action which had arisen. *Stalischmidt v. Walford, L. R., 4 Q. B. D., 217*, referred to. The High Court refused to allow the plaint in the suit to be amended by the addition of a claim for possession of the property left by H. **KALIAN SING v. LUKHEAS SING**

[I. L. R., 6 All., 211]

23. Specific Relief Act (I of 1877), s. 21—Arbitration—Agreement to refer—Order under s. 506, Civil Procedure Code, to refer matters in dispute in action then pending—Order under s. 373, pending the reference, granting plaintiff permission to withdraw with liberty to bring fresh suit.—The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 506 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex-parte* application under s. 373 of the Code for leave to withdraw from the suit with liberty to bring a fresh suit in respect of the same subject-matter. The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit, it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I of 1877). *Held* that the Court in the former proceedings had no power to revoke the order of reference prior to award except as provided by s. 510 of the Code; that consequently the Court's order under s. 373 was *ultra vires* if involving such revocation, or, if not involving it, left the order of reference still in force, that in either alternative the suit was barred by s. 21 of the Specific Relief Act; and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action. *Per* **TYNNELL, J.**, that the suit was barred by the second clause of s. 373, the Court having had no jurisdiction to pass the order under that section, or, having referred the suit to arbitration, to restore the suit to its file and treat it as awaiting the Court's decision. **SHEOAMBER v. DEODAT**

24. Civil Procedure Code, s. 373—Withdrawal of suit with liberty to bring fresh suit.—On the 5th September 1874 R, a Hindu, and his sons borrowed Rs. 5,000 from P and mortgaged to him certain land, items 1, 2, and 3. On the 7th Sep-

WITHDRAWAL OF SUIT—continued.

tember 1874, P borrowed Rs. 5,000 from R N and mortgaged his rights in items 1 and 2 and land of his own to R N. In 1877 R N bought at a sale in execution of a decree against R the share of R in the said items 1 and 2 subject to the mortgage created by R on 5th September 1874, and to another mortgage created by R on 11th January 1875. In 1880 R N sued P and the sons of R for arrears of interest due under his mortgage-bond. This suit was withdrawn with liberty to bring a fresh suit for the principal and interest due under the bond. In 1885 R N sued the sons of R and P to recover principal and interest due under his mortgage-bond. *Held* that the claim of R N was not barred. **VENKATA v. RANGA**

[I. L. R., 10 Mad., 160]

25. Withdrawal of suit with permission to bring a fresh suit on the same cause of action—Civil Procedure Code, s. 43.—Where a suit is withdrawn with permission under the first paragraph of s. 373 of the Code of Civil Procedure, the effect is to leave the parties in the same position as that in which they would have been if the suit had never been brought. A plaintiff, therefore, who has obtained an order under s. 373 of the Code, will not be debarred by s. 43 from claiming in a subsequent suit a relief which he might have included, but did not, in the suit which he was permitted to withdraw. *Venkata Chetti v. Ranga Nayak, I. L. R., 10 Mad., 160*, followed. **BEHARI LAL PAL v. BABAN MAI DASI**

[I. L. R., 17 All., 53]

26. Dismissal of suit—Decree containing clause stating that a fresh suit might be instituted as to a part of the subject-matter—Res judicata.—A suit for possession of immoveable property was wholly dismissed, on the ground that the plaintiff had not made out his title to the whole of the property claimed, though he had proved title to a one-third share of such property. The decree included an order in these terms: "This order will not prevent the plaintiff from instituting a suit for possession of the one-third interest of M L in the fields specified in the deed of sale," upon which the suit was based. No appeal was preferred from this decree. Subsequently the plaintiff brought another suit upon the same title to recover possession of the one-third share referred to in the order just quoted. *Held* by the Full Bench that the Court in the former suit had no power to include in its decree of dismissal any such reservation or order; that the fact that the decree was not appealed against did not give the order contained in it, which was an absolute nullity, any effect. *Kudrat v. Dinu, I. L. R., 9 All., 155; Ganesh Rai v. Kalka Prasad, I. L. R., 5 All., 595; Salig Ram Pathak v. Tirbhawan Pathak, Weekly Notes, All., 1885, 171; and Muhammad Salim v. Nabian Bibi, I. L. R., 8 All., 282*, explained. **SUKH LAL v. BHUKHI**

[I. L. R., 11 All., 187]

27. Jurisdiction—Withdrawal of part of claim—Part of property in suit within and part without the jurisdiction of the Court.—Suit for partition and possession of an undivided share of property sold to plaintiff by an

WITHDRAWAL OF SUIT—continued.

aged gotha lady of the class of Canarese Mahomedans called Navayata. The property sold was the vendor's share as heir of her father, brother, and sister.

against that part of the immovable property in suit which was within the local limits of the jurisdiction of the Court, having commenced with the defendants,

having been shown to be otherwise than bona fide) did not operate to take away the jurisdiction of the Court to adjudicate on the plaintiff's suit. KHATTA v. ISMAIL. L. L. R., 12 Mad., 380

28 — Summons not served on defendant—Suit for damages—Civil Procedure Code (Act XIV of 1952), ss 97, 477, 491—Arrest of defendant before judgment under s. 477 of Civil Procedure Code (Act XIV of 1952)—Subsequent application by plaintiff under s. 473 of Civil Procedure Code for leave to withdraw suit—Right of defendant to appear at hearing, although summons not served upon him—Compensation for arrest—Rule of Court No. 64—Practice—Procedure.—The plaintiff sued the defendant in Bombay for damages for breach of contract. The suit was filed on the 13th May 1950. The summons was not

fresh suit on the same cause of action. The defend-

summons had not been served on him, the defendant was not entitled to appear, and that no compensation could be awarded to him. Held (1) that, inasmuch as the plaintiff had by a legal process brought the defendant before the Court, the defendant had the right to appear at the hearing of the case, although no summons had been served upon him, and that he was entitled to object to the suit being dismissed under Rule of Court No. 64; (2) that under the circumstances the defendant was entitled to compensation for his arrest under s. 491 of the Code of Civil Procedure; (3) that the plaintiff might withdraw the suit under s. 473 of the Civil Procedure Code with liberty to bring a fresh suit on payment of the costs incurred by the defendant in the present suit. AIR ALL INDIA

[L. L. R., 15 Bom., 160

29. — Institution of fresh suit—Where a defendant sues to establish

WITHDRAWAL OF SUIT—continued.

his right to sell certain property in satisfaction of a decree against B, but withdrew the suit without having obtained leave to bring a fresh suit, and subsequently instituted another suit to establish his right to sell the same property in satisfaction of another decree against B.—Held that the second suit was not barred by the provisions of s. 373 of the Code of Civil Procedure. KANIVIA HANT BAY v. RAM NATH CHAKRABARTY.

[L. L. R., 21 Cal., 265

30 — Withdrawal of suit without permission to bring fresh suit—Application of s. 373 of the Civil Procedure Code to suits in Revenue Courts—Act X of 1939—s. 373 of the Civil Procedure Code does not apply to suits before the Revenue authorities under Act X of 1939, that Act being a complete Code in itself. RADHA MADHAI RAO v. LUKMI NARAYAN HIR CHOWDHRY. L. L. R., 21 Cal., 428

MOETAYA BULLAYKAR v. HIRABAI CHANDER DAS. L. L. R., 21 Cal., 514

31. — Suit withdrawn without liberty to bring a fresh suit—Suit for the same matter.—In 1873 the plaintiff's object the defendant's alleging they were in possession of the land in question under a lease from the late Zamorin of Calicut. The plaintiff's title rested on an instrument executed by him in 1822. It was objected that the instrument was not

[L. L. R., 21 Mad., 36

32 — Fresh cause of action—"Subject matter of suit." Meaning of.—Where a plaintiff brought a suit for partition of joint property from which he withdrew with the consent of the defendant's but without leave from Court to bring a fresh suit, and subsequently brought a second suit for the same joint property, brought this suit for the recovery of joint possession of the same.—Held that the mere fact of the plaintiff's withdrawal of the same property would not be sufficient to make the latter suit one for the same subject matter as the former, when the state of facts leading to the two suits and the respective claims made therein were different, and s. 373, Civil Procedure Code, does not apply. KANIVIA HANT BAY v. RAM NATH CHAKRABARTY. L. L. R., 21 Cal., 265 followed. Query—Whether the mere fact that a plaintiff withdraws with the consent of the defendant's but without leave of the Court, makes a 373 Civil Procedure Code inapplicable. The decision of DOMAYIA J. in the present case is supported by the following cases: WILSON v. C. & L. DICKS & CO. C. 121 (1891); GORAL CHANDRA HANDESS v. PRADEEP CHANDRA HANDESS. 4 C. W. N., 110

See JUDICIAL COMMISSIONER v. WATTS & CO. [Bourke, A. O. C. 102

WITHDRAWAL OF SUIT—continued.

33. ——— Costs—Power to award costs—
Withdrawal without leave.—The High Court has no power, under the Civil Procedure Code, to award costs to the defendant when the plaintiff withdraws, not having asked leave to do so with liberty to bring another suit for the same matter. *BRASS v. TIRUVENGADA PILLAI* . . . 1 Mad., 247

34. ——— Power to award Costs—Civil Procedure Code, 1859, s. 97.—Where the plaintiff applied, under s. 97, Act VIII of 1859, to be allowed to withdraw from the suit, with liberty to bring a fresh suit for the same matter, the Court refused the application. Another application for leave, simply to withdraw from the suit, was granted, the Court dismissing the suit with costs. *BRASS v. TIRUVENGADA PILLAI*, 1 Mad., 247, dissented from. *HOSSAINI BIBI v. PERI KHANUM* [1 B. L. R., O. C., 45

35. ——— Form of order—
Civil Procedure Code, 1859, s. 97.—A plaintiff who is permitted to withdraw from his suit under s. 97, Act VIII of 1859, must pay the defendant's costs. On such withdrawal, the proper order to be recorded is not one of dismissal, but one simply permitting the plaintiff to withdraw the suit, with liberty to bring a fresh suit for the same matter on payment of costs or otherwise as the Court may direct. *DOUGETT v. WISE* . . . 1 W. R., 322

36. ——— Payment of costs not made condition precedent to fresh suit—Power to stay suit.—A, having brought an action against B, was allowed to withdraw, with leave to bring a fresh suit, and was also ordered to pay the costs. *Held* that, the payment of the costs not having in terms been made a condition precedent to bringing a fresh suit, the Court had no power to stay proceedings in the fresh suit, on the ground that the costs had not been paid. *CHITTO v. MUZZUR HOSSAIN* [2 Hyde, 212

37. ——— Small Cause Court.—A Small Cause Court is not bound to allow a plaintiff to withdraw a suit, on the ground that he has received payment from one of the defendants in the suit, that attempt to withdraw having been made after the plaintiff had succeeded in getting a judgment against two defendants which had been set aside by the Court on various grounds, and a new trial ordered. In such a case the Court may permit the withdrawal of the suit upon the terms of plaintiff paying the first defendant's costs. *RAMA CHANDRA SHASTRY v. PAPU AITAN* . . . 3 Mad., 27

38. ——— Withdrawal of appeal—
Power of Appellate Court.—An Appellate Court has authority to permit an appeal to be withdrawn. *RAM PERSHAD OJHA v. BHURUSA KOONWAR* [9 W. R., 328

39. ——— Permission of Court—Notice of withdrawal.—An appellant has no right to withdraw an appeal, which has been regularly registered, without the permission of the Court. Where the appellant had given notice of the withdrawal of the appeal before the day of the hearing,

WITHDRAWAL OF SUIT—continued.

and notice of withdrawal had been given to the respondent, but not until costs had been incurred.—*Held* that the appellant was not at liberty to withdraw the appeal, and the Court ordered that the appeal be set down for hearing. *KAREEM BEE v. BERGAM BEE* . . . 3 Mad., 368

40. ——— Withdrawal of suit on appeal—Act XXIII of 1861, s. 37—Power of Appellate Court.—Under s. 37, Act XXIII of 1861, the High Court, upon appeal from a Judge sitting in the exercise of the ordinary original jurisdiction of the Court, had power, before pronouncing final judgment in appeal, to permit the plaintiff to withdraw from the suit with liberty to bring a fresh suit. *GREGORY v. DOOLEY CHAND*

[14 W. R., O. C., 17

41. ——— Civil Procedure Code, 1859, s. 97—Exercise by Appellate Court of powers under s. 37, Act XXIII of 1861.—Where application was made for leave to withdraw a suit, with leave to bring a fresh one, it being contended that the fact of a notarial protest on inland bills, and of their being in the hands of the holder without signature, was proof of dishonour; and further that, defendant being a Hindu, there was no necessity for notice of dishonour,—the Appellate Court, reversing the decision of the Court below, granted the application under the power given by s. 37, Act XXIII of 1861. *BOMBAY CITY BANK v. MOONJEE HUBRYDOSS* . . . Bourke, A. O. C., 99

42. ——— Civil Procedure Code, 1859, s. 97.—The plaintiff having sued, and the issues having been laid down as though the suit was for separate possession, the decree of the lower Court for joint possession was set aside, with leave to plaintiff, under Act VIII of 1859, s. 97, to bring a fresh suit for joint possession. *JUGGUNNATH DEB NAZIR v. MOHEBOOLLAH* . . . 17 W. R., 164

43. ——— Appellate Court, Powers of—Discretion, Exercise of—Civil Procedure Code, 1852, ss. 373, 582.—Where, on appeal from a decree dismissing a suit, the Appellate Court, being of opinion that the plaint was informally drawn and its allegations regarding the cause of action not sufficiently specific, gave the plaintiff permission, under s. 373 of the Civil Procedure Code, to withdraw the suit with leave to institute a fresh one,—*Held per* STRAIGHT, J., that with reference to the terms of s. 582 of the Civil Procedure Code, the Appellate Court had power to avail itself of the provisions of s. 373, and therefore had a discretion to make the order allowing the plaintiff to withdraw the suit and institute a fresh one. *Gregory v. Dooley Chand*, 14 W. R., O. C., 17, and *Khatoon Koonwar v. Hurdoot Narain Singh*, 20 W. R., 163, referred to. Also *per* STRAIGHT, J., that it could not be said that the Appellate Court in this case had exercised its discretion so unreasonably or erroneously as to compel the interference of the High Court with it in appeal. *Per* TYRRELL, J., that it might be taken that the Appellate Court, though not so stating in express terms, meant to set aside, and did set aside, the decree of the Court of first instance, regarding it as a decree which

WITHDRAWAL OF SUIT—concluded.

of the Civil Procedure Code (Act No. 14 of 1908)—that where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought—does not apply to applications for execution. *Pirjode v. Pirjode*, 1 L. R. 6 Bom. 681, dissenting from *Tarachand Meoraj Kashinath Trimbak*, 1 L. R. 10 Bom. 62.

45. — Civil Procedure Code, ss 373, 374, 347—Application for execution withdrawn by decree-holder—Act 11 of 1877.

applying for execution, but that, even assuming, that permission to apply again could be inferred from the action of the Court in returning the application, s 373 was applicable so as to make a subsequent application presented five years after the decree barred by limitation, with reference to art 17 of the Limitation Act. *Sardul Prasad v. Sita Ram*.

[1 L. R. 10 All. 71]

46. — Revocation of withdrawal—Civil Procedure Code, 1908, s 97—A plaintiff who has withdrawn from his suit is at liberty to refile the act of withdrawal at any time before final judgment. s 97 of the Civil Procedure Code was held to be inapplicable to a case where the plaintiff

WITNESS—CIVIL CASES.

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See CASES UNDER COMMISSION—CIVIL CASES

See DIVORCE ACT, s 62 [3 B. L. R., Ap. 8]

See CASES UNDER EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—DEPOSITIONS

See CASES UNDER EVIDENCE ACT, 1872 s. 33

See SPECIAL OR SECOND APPEAL—OTHER PRINCIPLES OF LAW OR PROCEDURE WITNESSES

See CASES UNDER WILL—ATTESTATION Attestation by—

See STAMP ACT 1879 s 3 cl. 4. [1 L. R. 23 Cal. 767
1 L. R. 17 All. 211]

Competency of—

See LAND ACQUISITION ACT 1870 s 17 [1 L. R. 17 Bom. 299]

— Damages by false statement of—

See CASES UNDER DEPOSITION.

See EVIDENCE ACT s 152.

[1 L. R. 13 Bom. 440]

See EIGHT OF SEVEN—WITNESS.

[1 L. R. 10 All. 425]

1 L. R. 10 Mad. 67

1 L. R. 15 Cal. 298

— Deposition of—

See CASES UNDER EVIDENCE ACT, s 31

See LIMITATION ACT 1877, s 19—ACKNOWLEDGMENT OF DEBT [1 L. R. 10 Mad. 220]

— Enforcing attendance of—

See PRACTICE—CIVIL CASES—COMMISSION. 1 L. R. 23 Cal. 404

— Examination of—

See ARREST 1 L. R. 8 N. 1, 2
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11 W. R. 423
17 W. R. 292
10 W. R. 14]

WITNESS—CIVIL CASES—continued.

See COMPANY—WINDING UP—COSTS AND CLAIM ON ASSETS.

[I. L. R., 14 Calc., 219]

Impeaching credit of—

See EVIDENCE ACT, s. 155.

[I. L. R., 17 Calc., 344]

Legacy to—

See WILL—CONSTRUCTION.

[I. L. R., 4 Mad., 244]

Non-attendance of—

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 177 (1859, s. 170).

Omission to examine—

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.

[I. L. R., 13 Bom., 336]

Order for examination of—

See INSOLVENT ACT, s. 36.

[I. L. R., 11 Bom., 61]

I. L. R., 22 Bom., 447

Privilege of—

See ARREST—CIVIL ARREST.

[14 B. L. R., Ap., 13]

I. L. R., 1 Calc., 78

4 Mad., 145

See CASES UNDER DEFAMATION.

See EVIDENCE ACT, s. 132.

[I. L. R., 8 Mad., 271]

See LIBEL . I. L. R., 14 Bom., 97

Refusal of party to attend as—

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.

[B. L. R., Sup. Vol., 716]

Refusal to summon—

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.

[I. L. R., 16 All., 218]

1. PERSONS COMPETENT OR NOT TO BE WITNESSES.

1. ——— Arbitrator—*Suit after award is set aside.*—If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him in the course of the arbitration and which might be material evidence. *NILMONER BOSE v. MOHIMA CHUNDER DUTT* . . . 17 W. R., 516

2. ——— Attorney—*Advocate—Competent witness.*—An attorney who has acted as advocate for one of the parties, and pleaded his case in Court, can be examined as a witness in the case. *RAMFAL SHAW v. BISWANATH MANDAL*

[5 B. L. R., Ap., 28]

WITNESS—CIVIL CASES—continued.**1. PERSONS COMPETENT OR NOT TO BE WITNESSES—concluded.**

3. ——— Magistrate—*Suit for malicious prosecution—Magistrate who held preliminary enquiry into criminal charge.*—Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary enquiry into a criminal charge. *Held* that in a suit for a malicious prosecution the defendant had a right to the evidence of the Subordinate Magistrate, who held a preliminary enquiry into a charge of forgery preferred by the defendant against the plaintiff. *RAMASAMI AYYAN v. RAMU MUPAN* . 3 Mad., 372

4. ——— Magistrate giving evidence before himself.—Where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. *QUEEN EMPRESS v. MANIKAM* . . . I. L. R., 19 Mad., 263

5. ——— Munsif—*Witness as to facts judicially before him.*—A Munsif ought not to be called on to depose as to what took place before him in the course of a trial which he was conducting as Munsif, and he is entitled to exemption. *ANONYMOUS* . . . 6 Mad., Ap., 42

6. ——— Person against whom affiliation order is sought—*Criminal Procedure Code, 1882, s. 488—Evidence Act (I of 1872), s. 120—Bastardy proceedings—Maintenance, Order of Criminal Court as to.*—Bastardy proceedings under the provisions of s. 488 of the Criminal Procedure Code are in the nature of civil proceedings within the meaning of s. 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf. *NUR MAHOMED v. BISMULLA JAN* . . . I. L. R., 16 Calc., 781

HIRA LAL v. SAHEB JAN I. L. R., 18 All., 107

7. ——— Mamlatdar as assessor under Land Acquisition proceedings.—On a reference to the Collector under the Land Acquisition Act, the Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken to his acting as an assessor. The District Judge eventually upheld the Collector's award. On an application under s. 622 of the Civil Procedure Code (Act XIV of 1882).—*Held* that a person who is appointed an assessor under s. 19 of the Land Acquisition Act (X of 1870) performs quasi-judicial functions, and is therefore incompetent to testify as a witness in the same proceedings. *SWAMIRAO v. COLLECTOR OF DHARWAR* [I. L. R., 17 Bom., 299]

8. ——— Wife—*Evidence of wife to prove non-access—Husband and wife—Presumption of legitimacy—Illegitimacy—Presumption of non-access—Evidence Act (I of 1872), ss. 112 and 118.*—A wife can be examined as to non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children. *ROZARIO v. INGLES*

[I. L. R., 18 Bom., 468]

WITNESS—CIVIL CASES—continued.

2. SUMMONING AND ATTENDANCE OF WITNESSES.

II. — Duty of Court.—Securing attendance of witnesses.—Every Court is bound to render all reasonable assistance to a party to enforce the attendance of his witnesses. **NILOMVER BANERJEE v. SUBHO MONGOLA DEBEE** . 6 W. R., 14

10. — Civil Procedure Code, 1852, s. 159. Under s. 159 of the Civil Procedure Code (Act XIV of 1852), a party to a suit is entitled, at or right, to obtain summonses for his witnesses any time before the day fixed for the disposal of the suit. **BAI KALI v. ALAKH PIRBHAI** . 1 L R., 15 Bom., 86

11. — Application for summons to cite witnesses.—A party is entitled at any stage of the case before hearing to apply for a summons to cite witnesses without reference to the number of such applications which he may have previously made, and it is the duty of the Court to comply with such application, if any time be left before the hearing of the cause. **ANVET CHANDRA MUKHOPADHYA v. HIRAMANI DAS** [3 B. L. R., Ap., 38

S. C. OROOHOOF CHUNDER MOOKERJEE v. HEERA MOYEE DOSSEE . 11 W. R., 418

HARI DAS BAIKAKH v. MOHAMMAD ROSETH [3 B. L. R., Ap., 18; 15 W. R., 447

12. — Power to summon witnesses.—Settlement of issues.—Act VIII of 1859 conferred no authority upon a Judge to issue summonses to witnesses to attend on the settlement of issues. The written statements must be prepared with great care and deliberation, so as to dispense altogether with parol evidence at the settlement of issues. **ANVET CHUNDER BANERJEE v. MOHAMMAD CHUNDER RAY** [1 Ind. Jur. O. S., 15; 1 Hyd., 147

The subsequent Codes, however, expressly provide for the attendance of witnesses at a settlement of issues: see s. 159, Civil Procedure Code, 1852.

13. — Discretion of Court to summon witnesses.—A Judge's discretion is not compelling the attendance of witnesses named by one of the parties must be exercised on reasonable grounds distinctly stated in the judgment. **QAZEM MAHOMED v. BYDATH DOOS CHOWDHRY** [5 W. R., Act X, 6

HARA CHAND PORAMANTIC v. KIRITO MOYEE GIKER . 1 W. R., 208

MATCHOONER DABEA v. KAREN DABEA [2 W. R., 4

See NIEM CHUND DEY v. ANVET COOMAR POT CHOWDHRY . 7 W. R., 147

14. — Selection of witnesses by Court.—It is not right for the lower Court to select five out of twenty witnesses tendered for examination. It is the bounden duty of the Judge to receive all the evidence tendered, unless the object of summoning a large number of witnesses clearly appears to be to impede the adjudication of the case.

WITNESS—CIVIL CASES—continued.

2. SUMMONING AND ATTENDANCE OF WITNESSES—continued.

or otherwise to obstruct the ends of justice. **RAMDHAN MAWDAL v. RAJIBALLAH PARAMANIK**

[6 B. L. R., Ap., 10

15. — Power to refuse to summon witnesses.—A Court has no power to refuse to summon witnesses when expressly requested by a party to do so unless the witnesses are required to be summoned in such a manner, or in such numbers as clearly indicates a venal desire of obstructing the course of justice. **RAM PRAT PANDIT v. WAHAB ALI KHAN** . 14 W. R., 68

16. — Refusal to receive evidence.—Where a party has been refused the right to examine a witness, the Court is bound to receive the evidence of that witness.

17. — Preliminaries to summoning witness.—Materiality of evidence.—Before the Court makes an order compelling the attendance of a party to the suit, it must be satisfied that his evidence will be material. **GOPAL CHUNDER HANMAN v. MONESH CHUNDER BANERJEE** . 21 W. R., 41

18. — Summoning plaintiff as witness.—Reasons for summons.—Duty of Court.—Materiality of evidence.—A Court is bound before summoning a plaintiff to give evidence, to record the reasons of its being satisfied that the evidence of the plaintiff is essential to the defendant's case. Where, however, the Court does not give reasons for being satisfied that the presence of the plaintiff is necessary, it does not follow that the defendant has failed to satisfy the Court that there was sufficient ground for the application. **MAHMOUD ADIB v. ADIB** . 17 W. R., 507

19. — Application to summon witnesses.—Witnesses declared unnecessary by Court.—Where on a case coming on for hearing before a Court to which it had been remanded, the Judge observed that the evidence of witnesses would be unnecessary, the declaration was held to have sufficiently justified the plaintiff in making no further application for a summons on their witnesses. **HAM JEWEL BISHU v. RADHA PERSHAD BISHU** [10 W. R., 100

20. — Examination of witnesses.—Practice.—On the 15th October 1881, the Court ordered that the witnesses should be examined in the following order:—

The Court then proceeded to examine the witnesses in the order named, and found for the plaintiff. The Court then ordered that the witnesses should be examined in the following order:—

WITNESS—CIVIL CASES—continued.**2. SUMMONING AND ATTENDANCE OF WITNESSES—continued.**

plaintiff's case had been in other respects finished before they could be examined. *PANDURANG ANPAI v. KESHAVJI JADHAVJI*. I. L. R., 6 Bom., 742

21. — Time for summoning witnesses — Duty of Court.—The Civil Procedure Code neither expressly nor impliedly declares that witnesses must be summoned before the day fixed for the first hearing of the suit. So long as the hearing merely stands adjourned, and so long as the party who wishes to summon witnesses has not closed his case, the Court is bound to summon them, unless it appears that the application is made so late that the witnesses cannot be reasonably expected to attend in time to be examined before that party's case closes. *INDRO CHUNDER BABOO v. DUNLOP* 9 W. R., 530

22. — Ground for refusal to summon witnesses—Obligation of Court to assist party—Delay in giving names of intended witnesses.—Where an appellant delayed to give in the names of his witnesses, but would yet have been within reasonable time to secure their attendance on the day of hearing if summonses had been sent through different means by the railway,—*Held* that the lower Appellate Court was bound to have directed the issue of the summonses, and to have given every assistance to the party asking for them, all additional expenses being paid by such party. *PEARSEE MOHUN MOOKERJEE v. MADHUB CHUNDER GHOSAL*. 9 W. R., 489

23. — Omission of proper steps to obtain attendance of witnesses.—Where some of the witnesses (defendants) in a suit had been examined, and plaintiff petitioned the Court to have the remaining defendants examined as witnesses, he was held not to have taken the necessary steps required by law to enforce their attendance, because he did not make any special application to the Court, or show sufficient grounds in support of his petition. *RAM TULSI THAKOOR v. OODIT NARAIN SINGH*. 12 W. R., 36

24. — Procedure under Dekkan Agriculturists' Act (XVII of 1879), s. 7—Right of defendant to call witnesses.—The plaintiff sued, under s. 3, cl. (w), of Act XVII of 1879, for money due on a bond dated the 8th September 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit. The Court therefore proceeded with it *ex-parte*. The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court,—*Held* that it was his duty to summon the witnesses named by the defendant. *DULICHAND v. DHONDI*

[I. L. R., 5 Bom., 184

WITNESS—CIVIL CASES—continued.**2. SUMMONING AND ATTENDANCE OF WITNESSES—continued.**

25. — Civil Procedure Code, 1877, s. 137—Summons to produce documents.—In all cases in which parties apply for a summons to compel the attendance of witnesses, or a summons to produce documents, or apply to have a document sent for under s. 137 of the Code of Civil Procedure, the Court ought not to refuse such application, merely because in its opinion the witnesses cannot be present, or the documents cannot be produced, before the termination of the trial. *KRISHNA CHURN BAISACK v. PROTAB CHUNDER SURMA*

[I. L. R., 7 Calc., 580

26. — Adjournment for attendance of witnesses — Civil Procedure Code (Act XIV of 1882), s. 156—Discretion, Exercise of—Witnesses, Attendance of—Power of High Court on second appeal.—On the day fixed for the hearing of a suit, the defendant applied for process against certain of his witnesses who had been summoned, but who had failed to attend, asking for an adjournment to obtain their attendance. This application was refused and the case was proceeded with. The plaintiffs' evidence was recorded and that of one of the defendants; the defendants being unable to produce further evidence, the Court recorded that the case was closed, and that judgment would be delivered on the following day, the 31st December. On the day following the defendants produced certain witnesses and asked that they might be examined. This application was rejected, and judgment was subsequently delivered in favour of the plaintiffs. *Held per PETHERAM, C.J.*—That the omission to examine the defendants' witnesses on the 31st December was a substantial error in procedure, and that the Munsif had therefore exercised his discretion wrongfully. *Per GHOSE, J.*—That although there was some doubt whether the Court on second appeal could interfere in a point of discretion, yet this doubt was not strong enough to justify an expression of opinion contrary to that arrived at by the Chief Justice. *MONI LAL BANDOPADHYA v. KHIRODA DAS*

[I. L. R., 20 Calc., 740

See *TAYLOR v. SARAT CHUNDER ROY CHOWDHRY*
[I. L. R., 20 Calc., 745 note

27. — Civil Procedure Code (1882), s. 159—Application to summon witnesses—Duty of Court in respect of such application.—Where a person making an application to a Civil Court for witnesses to be summoned has negligently or with intention to delay the hearing postponed the making of his application for a summons until a time when it would be impossible to obtain the attendance of the witnesses at the hearing, the Court might properly refuse to adjourn the hearing, but nevertheless it would be the duty of the Court, to order the summons asked for to issue, as the Court is not given a discretion under s. 159 of the Code of Civil Procedure enabling it to refuse such an application. *Krishna Churn Baisack v. Protab Chunder Surma*, I. L. R., 7 Calc., 560, and *Bai Kali v. Alarakh Pirbhai*, I. L. R., 15 Bom., 56, approved. *BHAGWAT DAS v. DEBI DIN* I. L. R., 16 All., 218

WITNESS CIVIL CASES—continued

2. SUMMONING AND ATTENDANCE OF WITNESSES—continued

28. — Ground for adjournment of suit—*Delay in making application to summon witnesses*—*Discretion of Court*—If a party applies for summons to witnesses so late that he cannot bring the witnesses on the day of hearing, it still remains in the discretion of the Court to decide whether or no the case should be adjourned. A Munsif is bound under the Procedure Code to issue summonses to witnesses when asked for. **ABDOOL KADIR v. ABUL MISBHA** 24 W. R., 260

29. — Civil Procedure Code, 1852, ss. 159 and 167—*Summoning witnesses*—*Delay in serving summonses*—Under a 159 of the Code of Civil Procedure (Act XII of 1852) parties are entitled to summoners for their witnesses at any time before the final hearing but if there has been delay and want of diligence in consequence of which witnesses, not having been served in good time, are not present, the Court may properly refuse to adjourn the hearing. **KAZI AHMED v. KAZI MAHAMAD** [L. L. R., 9 Bom., 308]

30. — Power to dismiss suit—*Dismissal of suit on ground of delay in bringing time after filing of list to summon witnesses*—Civil Procedure Code, 1859, s. 149—1877, s. 159—The 20th of March 1877 having been fixed for the final hearing of a suit, the plaintiff on the 17th of March, and the defendant on the 19th filed their list of witnesses to be summoned. Both lists were ordered merely to be put up with the record. When the suits came on for hearing, it was dismissed on the ground that when the plaintiff filed his list, there was not sufficient time left to summon the witnesses. *Held* that the Judge was not justified in dismissing the suit on this ground unless he found that it would have been absolutely impossible to secure the attendance of the witnesses had the summonses been granted on the 17th instant. S. 149 of Act VIII of 1879, and s. 159 of Act X of 1877, discussed. **RAJENDRO NARAYAN GHOSH v. KARNAT NARAYAN BHATT** 3 C. L. J., 660

31. — Issue of fresh subpoenas to witnesses—*Re-hearing of ex-parte case under s. 111, Civil Procedure Code, 1859*—*Quare*—When either under s. 110, Code of Civil Procedure, or in the exercise of a power of review a suit is restored to its original position, is the plaintiff bound to obtain and issue fresh subpoenas? **BIHARI PRASAD SINGH v. RATTEN CHAND CHAKRA** 20 W. R., 3

32. — Service of subpoenas—*Liability for non-appearance*—After a list of witnesses has been filed and the talukdars paid, the Courts officers, not the applicant, are responsible for the service and return of return. **MUSTAFI AHMAD v. MOOKDOOM BHEE** 16 W. R., 69

33. — Form of summons—*Omission to state place of attendance*—A summons should state the place of attendance. **ANONYMOUS** [7 Mad., Ap., 14]

ANONYMOUS 7 Mad., Ap., 43

See s. 163, Civil Procedure Code, 1852.

WITNESS—CIVIL CASES—continued.

3. SUMMONING AND ATTENDANCE OF WITNESSES—continued.

34. — Summoning public officer as a witness.—In fixing the time for the attendance of a public officer as a witness or in granting an adjournment for that purpose, the fullest consideration must be given to the exigencies of the public duties of the officer summoned. **ANONYMOUS** [8 Mad., Ap., 6]

35. — Issue of warrant on non-attendance of witness—*Warrant of arrest for witnesses not attending*—*Verbal order to attend*—A verbal order of the Court to witnesses requiring them to attend on a future day will not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order. **VENKATARAM v. PATTANABH** 5 Mad., 133

ANONYMOUS 6 Mad., Ap., 10

See, however **ANONYMOUS** 6 Mad., Ap., 15

3. PAYMENT OF WITNESSES

36. — Right to be paid expenses—*Omission to apply for expenses before giving evidence*—A witness is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence. **LONDON ROBERT AND MEISTERMAN HANK v. MAHOMED IBRAHIM PAKKAN** 1 L. L. R., 619

37. — *Liability for expenses*—*Liability of and out of wealth*—People of rank and wealth, when summoned as witnesses to a case, are liable for their place of residence, are entitled to travelling and other expenses payable to their retainers. **CHURCHMAN SINGH DAS v. JAGMOHAN DAS** [10 W. R., 76]

38. — Payment of expenses into Court—*Civil Procedure Code 1859, s. 151*—Under s. 151, Act VIII of 1859, ordered to Justice Courts by s. 67 Act X of 1879, the defendant was not bound to pay into Court the costs of summoning and defraying the expenses of the witness, until the Court had found that was reasonable. **CHANDRANATHAN v. BHAI MOHARAYAN** 6 W. R., 125

39. — Power to order evidence to be taken—*Omission to tender expenses*—*Tender of tender of expenses*—Where there was no proof that a defendant's witnesses' expenses were tendered to him by the party at whose instance he was summoned, the Court on appeal directed to order that witness's evidence to be taken so to take his oath. **JOHAN CHANDRANATHAN v. CHANDRANATH DAS** 18 W. R., 111

40. — Amount of expenses—*Compensation for loss of time*—Act VIII of 1859 empowers a Judge to order compensation to be made for loss of time. **NARAYAN DAS v. JAGMOHAN DAS** 2 Hyde, 230

WITNESS—CIVIL CASES—continued.**3. EXPENSES OF WITNESSES—concluded.**

41. ———— *Provision for expenses—Suit for expenses—Cause of action.*—No action for the expenses of a witness will lie. Explanation of the manner of providing for the payment of such expenses. *DE SARAN v. HURRISH CHUNDER BISWAS* [5 W. R., S. C. C. Ref., 6

4. DEFAULTING WITNESSES.

42. ———— *Non-attendance of witnesses on summons—Duty of parties—Commission.*—When witnesses do not appear after service of summons, it is the duty of the party requiring their evidence, and not of the Court, to move for further measures to be taken to secure their attendance; and when a commission is issued for the examination of witnesses, the Court must be moved to wait for the return. *NUND MOHUN CHOWDHRY v. GOLUCK NATH NEOGEE* . . . 11 W. R., 99

43. ———— *Duty of parties—Issue of attachment—Civil Procedure Code, 1859, s. 168.*—Where witnesses do not appear on summons, it is for the parties to move the Court, not for the Court to proceed, *suo motu*, to further the production of the witnesses, though the Court may issue attachment under s. 168, Code of Civil Procedure, if it is shown that the witnesses are absconding or keeping out of the way. *BACHMAN v. LALL BEHAREE PANDEY* . . . 13 W. R., 324

44. ———— *Civil Procedure Code (1882), s. 174—Non-attendance of witness in obedience to a summons—Warrant of arrest—Non-payment of expenses in accordance with s. 160, Civil Procedure Code.*—There is no obligation on a Civil Court to issue a warrant for the arrest of a witness who, having been summoned, has failed to attend, when it is shown to the Court that the absence of such witness is due to the non-payment or non-tender, by the person at whose instance the summons had been issued, of the necessary expenses of such witness as specified in s. 160 of the Code of Civil Procedure. *TODAR MAL v. SAID MUHAMMAD* [I. L. R., 17 All., 277

45. ———— *Order for arrest of witness—Civil Procedure Code, 1859, s. 168—Proceedings against witnesses absent who have been summoned.*—Where a lower Appellate Court, by the terms of its order on a petition for the apprehension of witnesses, under s. 168, Code of Civil Procedure, undertook to see that proper orders should be passed, it was bound to pass such orders as might, in its judicial discretion, be necessary under that section. *MOHADEB SHAHA v. SHEO SUHOY GERR*

[9 W. R., 359]

46. ———— *Witness making default in appearing—Civil Procedure Code, 1859 s. 168—Ground for issue of warrant.*—S. 168 of the Civil Procedure Code required that there should appear to the Court to be satisfactory ground for believing that the default on the part of witnesses summoned to give evidence was without lawful excuse

WITNESS—CIVIL CASES—continued.**4. DEFAULTING WITNESSES—continued.**

before issuing a warrant for the arrest of such witnesses. But it was not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced. *PERIYANNA CHETTY v. GOVINDA GOUNDEN* . . . 5 Mad., 104

47. ———— *Issue of proclamation against absent witness—Materiality of evidence—Ground for non-attendance.*—A Court was held to be not bound to issue a proclamation against absent witnesses in a case where it was not satisfied that the witnesses were material, or that they had really absconded to avoid attendance. *BHOOBUN MOYEE DOSSEE v. KISHOREE DOSSEE*

[6 W. R., 235]

48. ———— *Application for process against absconding witness—Ground for not granting application—Civil Procedure Code, 1859, ss. 159, 168.*—On application being made under ss. 159 and 168 of Act VIII of 1859 for issue of process against an absconding witness, the Court, if satisfied (as it was bound to be) that the witness had absconded and that he was a material witness, ought to grant the application unless the applicant had placed himself in such a position by his conduct that it would be inequitable to grant it. *RAJOO SINGH v. LALLA BALGOBIND LAL* . . . 1 W. R., 26

49. ———— *Notice of proclamation—Civil Procedure Code, 1859, ss. 159 and 168—Service of proclamation.*—The proclamation issuable under s. 159, Act VIII of 1859, could not be legally affixed to the māl cutchery of a defaulting witness. Before the provisions of that section can come into play, personal service of summons must be attempted. In the absence of process of legal service, the Magistrate's order of imprisonment for contempt, under s. 174 of the Penal Code and s. 168 of the Code of Criminal Procedure, was quashed. *QUEEN v. HURYNATH CHOWDHRY* . . . 7 W. R., Cr., 58

50. ———— *Discretion of Court as to issue of proclamation—Proclamation against absent witness—Civil Procedure Code, 1859, s. 159.*—S. 159, Code of Civil Procedure, gives a Civil Court a discretion as to the issue of proclamation and subsequent orders for attachment; but such Court is bound to exercise a reasonable discretion. *POBAN CHUNDER GHOSE v. GORRE NATH SINGH*

[8 W. R., 505]

51. ———— *Ground for issue of proclamation—Civil Procedure Code, 1859, s. 159.*—A Court was not authorized to issue the proclamation and attachment mentioned in s. 159, Code of Civil Procedure, unless it was proved to its satisfaction that the evidence of the witness was material, and that he was avoiding the summons; and after these circumstances have been shown, it was a matter of discretion to issue the proclamation and attachment, and after issue to let the case stand over. *KALEE DASS CHUCKERBUTTY v. ESHAN CHUNDER CHATTERJEE* . . . 13 W. R., 416

52. ———— *Production of document—Civil Procedure Code, 1882, s. 174—Court's juris-*

WITNESS—CIVIL CASES—continued.

4 DEFAULTING WITNESSES—continued.

diction to punish a witness for refusing to produce a document—*Procedure—Penal Code (Act XIX of 1860), s. 175—Criminal Procedure Code (Act X of 1852), s. 450.*—A witness was summoned to produce a document.

the Court fined him Rs 5 under s. 174 of the Code of Civil Procedure. *Held* that the fine was literally levied. The jurisdiction of the Court to punish under s. 174 of the Civil Procedure Code was only in the case of a witness who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who having a document will not produce it is provided for by s. 175 of the Penal Code and s. 450 of the Code of Criminal Procedure. *ISAK PRINCHARD DOWLING*
L. R. R., 12 Bom., 63

53. — Service of subpoenas—Civil Procedure Code (Act XIX of 1859), s. 60, 174—Failure to attend—*Fine.*—S. 174 of the Code of Civil Procedure is a sanction of a highly penal nature, and its provisions in order to give validity to anything purporting to be done under them, must be strictly complied with. Where the return of the person of the service of a summons upon a witness was in these terms: "The remaining witness N. 1 being in Calcutta the copy of summons in his name has been hung upon the wall of the eatery house of the defendant's residence. *Held* that the circumstance that the person could not find the witness when he says he knew where the witness was is not sufficient *per se* to warrant the person in affixing a copy of the summons to the house of the witness, or in constituting a substituted service and s. 60, Civil Procedure Code. That under s. 174 Civil Procedure Code, a witness who has failed to appear on his summons can only be fined after he has been arrested and brought before the Court. Where a witness was served as above and he appeared for a time in appar. *Held* that the fact of his applying for time would not preclude him from saying that there had been no such service of the summons as could warrant a s. 174, Civil Procedure Code, being put into force against him. *KALI NARAYAN BHOJENDRA S. BHOJ*
S. C. W. N., 307

54. — Ground for postponement of case—Application for process against absent witness made at late stage of case—Civil Procedure Code, 1859, s. 153. — Where an application was made at a very late stage of a case to enforce the provisions of s. 153 of the Code of Civil Procedure, without proffer of any proof that the witness was absconding or keeping out of the way for the purpose of avoiding the service of the summons, the lower Appellate Court was held to have been justified in not postponing the case to secure the attendance of the witness, although natural. *ANANTHIA SINGH*
S. C. W. N., 178

55. — Fine for avoiding service of summons—Act XIX of 1859, s. 174—X of

WITNESS—CIVIL CASES—continued.

4 DEFAULTING WITNESSES—continued.

1851, s. 23 of Act XIX of 1853 having been repealed by Act X of 1854, a Judge had no jurisdiction, under Act VIII of 1851, to inflict a fine for the purpose of punishing a witness who absconded, or kept out of the way, to avoid service of summons. *IN RE GAZALIAN PRASAD NARAYAN SINGH*

[I. L. R., A. C., 163]

GUJARATI PRINCHARD NARAYAN SINGH v. JEDDO NARAYAN
10 W. R., 233

5 SWEARING OR AFFIRMATION OF WITNESSES.

56. — Objection to take oath—*Member of Church of England—1851, s. 23 of Act XIX of 1853.*—A member of the Church of England is not exemptly law from taking an oath in a Court of justice in India, although he may entertain sincere objections to take an oath on the Bible, and is willing to make an affirmation of his own free choice. The English Statute of 1851, s. 23, does not apply to India. *VAIR HALL v. SOWRIY*
2 Mad., 243

57. — Where a Mahomedan witness stated that he had taken an oath to tell the truth in general, but that he was sworn from a desire which disqualified him from taking an oath on the Koran and purification, *Held* that the witness must be sworn in the usual way or not at all. *13, 13, 13, 13*
1 Mad., 89 note

58. — Refusal to examine witnesses—*Dismissal of case at first Court on account of defendant's witnesses—Reversal of decree on appeal.*—*Entry of Appellate Court to set aside decree of first Court on account of error of law.*—Where a Court of first instance examining a witness to examine certain witnesses from the defence and the suit, and the lower Appellate Court, disbelieving the evidence of those witnesses for the defence who were examined, allowed the plaintiff's appeal. *Held* that, before doing so, the lower Appellate Court should have afforded the defendant an opportunity of supplying the evidence which they had given in the first Court by the testimony of their witnesses whom that Court had declared unnecessary to hear, and that the case must be remanded because it was in the first Court that the defendant examined the witnesses testified by the defence. The Court directed the first Court to examine the defendant's witnesses, and having done so, to bring their objections to the lower Appellate Court, which was to require the appeal to be allowed or dismissed. *KUTUB KHAN v. INAM KHAN*
[I. L. R., P. All., 250]

6 EXAMINATION OF WITNESSES

(a) GENERAL.

59. — Selection of witnesses—*Entry of Appellate Court to set aside decree of first Court on account of error of law.*—Where a Court of first instance examining a witness to examine certain witnesses from the defence and the suit, and the lower Appellate Court, disbelieving the evidence of those witnesses for the defence who were examined, allowed the plaintiff's appeal. *Held* that, before doing so, the lower Appellate Court should have afforded the defendant an opportunity of supplying the evidence which they had given in the first Court by the testimony of their witnesses whom that Court had declared unnecessary to hear, and that the case must be remanded because it was in the first Court that the defendant examined the witnesses testified by the defence. The Court directed the first Court to examine the defendant's witnesses, and having done so, to bring their objections to the lower Appellate Court, which was to require the appeal to be allowed or dismissed. *KUTUB KHAN v. INAM KHAN*
[I. L. R., P. All., 250]

WITNESS—CIVIL CASES—continued.**6. EXAMINATION OF WITNESSES—continued.**

the Court to examine such of them as they may offer for examination, and it is their own fault if they do not take the necessary steps to have the witnesses examined, or to compel them to be present for examination at the proper time. **MORNO MOYEE DEBEE v. BHEEM KOOMAR CHOWDHRY** . 6 W. R., 231

DEEN DYAL SINGH v. DANEE ROY

[13 W. R., 185]

60. ——— Right to have witnesses examined—Ground for refusing to hear witness—Opinion of Court as to materiality of evidence.—Every party to a suit is entitled to have all the witnesses whom he desires to call, and is ready at the trial to produce, heard by the Court, whatever opinion the Court may form by anticipation as to the probable value of the evidence when it shall be given. **LOOLOO SINGH v. RAJENDUR LAHA**

[8 W. R., 364]

PORAN CHUNDER GHOSE v. GOPREENATH SINGH

[8 W. R., 505]

CHOWDHRY KHOERGO ROY v. SHIB TOHUL ROY

[17 W. R., 172]

61. ——— Ground of special appeal—Omission of Court to examine witness.—As a general rule, all the witnesses brought forward by a party ought to be examined. But when an objection is made in special appeal that the Judge below has omitted to examine certain witnesses, it ought to be shown that the evidence of those witnesses would have been material to the case. **NILKANTH SURMAH v. DOOSELA DEBIA** . 6 W. R., 324

62. ——— Want of opportunity to adduce evidence, Proof of—Tender and rejection of witness.—In order to establish such a plea as that he was not allowed an opportunity to adduce evidence, a party must show that he tendered witnesses or other evidence, and that his tender was rejected on the ground alleged. **BUKSH ALI SOWDAGUR v. JOYANUT KHAN** . 11 W. R., 248

CHUNDER NATH SEIN v. ANUNDMOYEE DOSSEE

[11 W. R., 289]

QUEEN v. TOTARAM . 11 W. R., Cr., 15

63. ——— Refusal to examine witness—Ground for refusal—Omission from list of witnesses.—The fact of a witness not having been named in the plaintiff's list of witnesses is no ground for refusing to examine him when produced at the proper time. **RAKHAL DOSS MUNDUL v. PROTAP CHUNDER HAZRAH** . 12 W. R., 455

64. ——— Refusal of verbal request of vakil—Ground of special appeal.—Where a lower Appellate Court's refusal to examine witnesses in a suit for damages for assault is made a ground of special appeal, it is not sufficient to put in an affidavit to the effect that a verbal request of the vakil to examine the witnesses was refused by the Judge. **RAMESWAR BHUTTACHARJEE v. SHIB NARAIN CHUCKERBUTTY** . 14 W. R., 419

WITNESS—CIVIL CASES—continued.**6. EXAMINATION OF WITNESSES—continued.**

65. ——— Additional witnesses to facts already in evidence—Tender of large number of witnesses—Ground for remand.—In a suit for possession of zamindari and other estates claimed by the plaintiff as son and heir of the deceased zamindar, the defendants denied the title of the plaintiff, alleging that he was a spurious and supposititious child and tendered fifty-eight witnesses to prove that fact. The Zillah Court, having taken the depositions of thirty of these witnesses, refused to permit the remaining twenty-eight to be examined, on the ground that, as they were going to prove the facts deposed to by those already examined, it was unnecessary to take their depositions, and ultimately decided in favour of the plaintiff. The defendants appealed to the Sudder Court, which refused to examine the witnesses rejected by the Zillah Court, and affirmed the decree of that Court. On appeal to Her Majesty in Council, the Judicial Committee remitted the case back to the Sudder Court, being of opinion that the refusal by that Court to permit the examination of the witnesses tendered was irregular, and that no decision could be come to upon the merits under such circumstances. **JESWUNT SINGJEE UBBY SINGJEE v. JET SINGJEE UBBY SINGJEE**

[2 Moore's I. A., 424]

66. ——— Ground for remand.—A lower Court having allowed some of the witnesses of the plaintiff to depart without taking their evidence, the plaintiff objected to its taking the evidence of more of the defendant's witnesses than of his own. Upon this the Court allowed some of the defendant's witnesses to leave the Court without examining them. The case, on coming up to the High Court, was remanded for examination of all the remaining witnesses and a fresh decision. **GOPER OJHA v. HUR GOBIND SINGH** . 12 W. R., 229

67. ——— Application to re-examine after consent to allow evidence in one suit to be evidence in others.—Five suits having been brought to recover a balance of accounts from defendants, who were alleged to be partners of a trading concern, and as such liable, certain witnesses were examined in four of the cases in which the plaintiff in one of the suits was not a party, and at his request the evidence taken in those cases was allowed to be used as evidence in his case, and then the witnesses were discharged. Two days after this he applied to have the witnesses re-examined, giving no reason for his application, which was refused. Held that the refusal was justified in the absence of any new reason for the re-examination. **SREENATH ROY v. GOLUCK CHUNDER SEIN** . 15 W. R., 348

68. ——— Death before delivering legal judgment—Obligation to hear witnesses again—Consent of parties.—A suit was dismissed by a Deputy Collector, who dies before recording a legal judgment, whereupon it was made over by the lower Appellate Court for trial to the deceased officer's successor, who decided the case in favour of the plaintiff upon the evidence as it stood on the record without any objection by either party. Held that

WITNESS—CIVIL CASES—continued.**6. EXAMINATION OF WITNESSES—continued.**

should not be examined.—*Held* that defendant should not have been bound solely and absolutely by the plaintiff's deposition, but that the other evidence on the record should also have been considered. *JUGDEO SINGH v. MOLAZIM HOSSEIN* . 13 W. R., 108

(b) CROSS-EXAMINATION.**80. ——— Right to cross-examine—**

Witness called by the Court.—A witness called by the Court is liable to be cross-examined by any of the parties to a suit. *TARINI CHARAN CHOWDHRY v. SARODA SUNDARI DAS*

[3 B. L. R., A. C., 145: 11 W. R., 468

81. ——— Witness called

by Court.—A party summoned by the Court to give evidence is not only required to give answers to the questions put to him by the Court, but the opposite party has a right to cross-examine him. The statement of any person examined is not admissible unless the opposite party has had the opportunity of cross-examining him. *GOOROODOSS ROY v. GREEDHUR SEIN*

[11 W. R., 110

SHURFURAZ MOLLAH v. DHUNOO 16 W. R., 257

82. ——— Co-defendant se-

parately represented.—One co-defendant, whose interests are separately represented, may cross-examine another. *NARASIMMA v. KISTNAMA* . 1 Mad., 456

83. ——— Recall of witnesses

Omission to give opportunity for cross-examination.—A Court of first instance decreed a case *ex-parte* in favour of the plaintiff, and at a rehearing did not recall the plaintiff's witnesses, whom, therefore, the defendant had no opportunity to cross-examine, and again gave a decree for the plaintiff. The lower Appellate Court rejected the evidence of plaintiff's witnesses, and reversed the decree. *Held* that the Court of first instance should have recalled the plaintiff's witnesses, and given the defendant an opportunity of cross-examination. *RAM BAKS LALL v. KISHORI MOHAN SHAHA*

[3 B. L. R., A. C., 273: 12 W. R., 130

84. ——— Refusal to allow

cross-examination—Act VIII of 1859, s. 170.—A defendant failed to appear when ordered to attend under s. 170, Act VIII of 1859. The Judge did not at once pass judgment against him, but called the plaintiff's witnesses, and refused to allow the defendant's *vakil*, who was present, to cross-examine them. *Held* that the Judge ought to have allowed the defendant's *vakil* to cross-examine the plaintiff's witnesses. *PAKAKTAR v. JAKRIRAM BHAKAT*

[2 B. L. R., Ap., 12

85. ——— Refusal of witness to an-

swer questions on cross-examination—Civil Procedure Code, 1859, s. 169—"Lawful excuse."—A party to a suit tendering himself as a witness, and declining without lawful excuse to answer questions put on cross-examination, was liable to be dealt with under s. 169 of the Civil Procedure Code. "Without lawful excuse" means

WITNESS—CIVIL CASES—continued.**6. EXAMINATION OF WITNESSES—concluded.**

such an excuse as would in law justify the refusal to give evidence. *LEKH RAJ v. PALEERAM*

[1 N. W., 162: Ed. 1873, 241

86. ——— Cross-examination to credit

Opinion formed as to credit of witness by another Judge in another case inadmissible.—Evidence of the particular estimate formed by a Judge in another case of the credit to be attached to the testimony of a witness who is cross-examined in a subsequent trial is inadmissible. *IN THE MATTER OF PASUMARTY JUGGAPPA* 4 C. W. N., 684

7. CONSIDERATION AND WEIGHT OF EVIDENCE.**87. ——— Credibility of witnesses—**

Power to set aside decision on evidence.—The credibility of witnesses is a matter altogether for the Court of first instance and the Court which hears a regular appeal; and if these Courts are satisfied that the witnesses are not to be believed, their decision cannot be set aside by the High Court on special appeal, even though upon a general view of the case it should think that, if it had tried the case originally, it might have come to a different conclusion. *GOUREE PERSHAD KOONDOL v. PRANNATH SURMAH*

[10 W. R., 365

88. ——— Mode of testing

credibility—Several witnesses to same facts.—In examining evidence with a view to test whether several witnesses who bear testimony to the same facts are worthy of credit, it is important to see whether they give their evidence in the same words, or whether they substantially agree, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance, and that variation in unimportant details, which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story. *NANA NARAIN RAO v. HARREE PUNTH BHAO*

[Marsh., 436: 9 Moore's I. A., 96

89. ——— Witnesses called

to support case giving evidence contrary to it.—A party who calls a witness to give evidence on his behalf is not necessarily bound by his evidence; but if the evidence is at variance with the truth of his case (e.g., if a witness called to prove execution of a document swears that it was not executed and has the means of knowing the fact), it throws a suspicion on the case which renders the clearest testimony necessary to establish its truth. *FUZEELUN BEEBEE v. OMDAR BEEBEE* 10 W. R., 469

90. ——— Credit on other

matters of witnesses supporting a false case.—Although it does not necessarily follow that where a witness gives evidence on a particular fact in a case and that fact is found against his evidence, he is to be entirely disbelieved on the other parts of the case he has spoken to, yet where witnesses who were not merely giving an opinion upon an isolated fact in the case, but came into Court to prove the whole case made by the plaintiffs, and that a very special case,

WITNESS—CIVIL CASES—continued

7. CONSIDERATION AND WEIGHT OF EVIDENCE—continued

and it is shown to be a case false in its material features, much reliance cannot be placed on their evidence as to any particular questions in the case **HABIBULLAH & GOCHER ALLI KHAN**

[18 W. R., P. C., 523]

81. ——— Ground for refusal to consider evidence — *Value of testimony of expert evidence*

LATOH MISTREE & AGAMUDDH DESHTO

[14 W. R., 483]

82. ——— Mode of weighing evidence — *Consideration of motives for bringing a suit* — Where the evidence in support of a case is doubtful, the Court, in weighing that evidence, may properly take into consideration the motives imputed to the plaintiff as having induced him to sue **BURCH & FUREZD ALI**

[3 N. W., 303]

——— Evidence — In testimony of a train conversation took place, is of more value than that of one who says that it did not **CHOWDHRY DEBY PERSAD & CHOWDHRY DOWLET KHAN**

[6 W. R., P. C., 55; 3 Moore's I. A., 347]

84. ——— Credit of witness *a servant or dependant of plaintiff* — The circumstance of a witness being a servant or a dependant of the plaintiff does not of itself disentitle him to credit **SNOODER CHUNDER KULLAN & KOTLASH CHANDER MAL**

[14 W. R., 23]

85. ——— Rejection of evidence unnecessary and unjustifiably — *Held by NORMAN, J.*, that the Judge was not at liberty to reject, as matters which he could wholly leave out of consideration, any of the evidence before him in a case where the witnesses were unimpeached in their general character and uncontradicted by any testimony on the other side, and where there was no improbability in the facts which they related and that the probative force arising from concurrent testimony was the compound ratio of the probalities of the testimonies taken singly **RADHA KANT DEB & KHEMA DOSSEE**

[7 W. R., 105]

86. ——— Evidence of witnesses found unreliable in criminal case — A Judge was held to have done wrong in throwing out the evidence of witnesses tendered by the defendant in a civil action merely because they have been found

——— Evidence of witnesses found unreliable in criminal case — A Judge was held to have done wrong in throwing out the evidence of witnesses tendered by the defendant in a civil action merely because they have been found

87. ——— Evidence, Weight of — *Witness, Evidence of, part of a book is disbelieved, value of* — If a part of the evidence of a

WITNESS—CIVIL CASES—continued.

7. CONSIDERATION AND WEIGHT OF EVIDENCE—continued

witness is disbelieved, other evidence coming from the same quarter must be viewed warily, but that does not exonerate the Court from weighing whatever evidence has actually been tendered and the mode in which it has been met. **JAMESWAR KOER & BHARAT PERSHAD SANI**

[4 C. W. N., 18]

88. ——— Evidence of person who has been convicted of perjury or other offence — The evidence of a person who has been punished for perjury or of a person who has been convicted of a criminal offence can hardly be entitled to the credit that would be given to the testimony of a person against whom no such imputation can be brought. **DOOSORY KAI & DOOSORY LAL**

[3 N. W., 97]

89. ——— Evidence of truth of witness — The observation that the evidence of a witness proves too much is not rebutted by the suggestion that it cannot be supposed that the witness was suborned for, if he was possessed of common shrewdness he would not have overdone the thing and then have given rise to such an objection. **GOOSHAN LAL & COTAGHERRY MOONCHIAN**

[5 W. R., P. C., 127; 3 Moore's I. A., 113]

100. ——— Credibility of witnesses — *Professional witness* — *Witnesses in former cases* — The Privy Council, referring to the generality of the Principal and the American's observations as to certain witnesses having given evidence in other cases, observed that, though it was a legitimate object to a man's credit that he was a professional witness yet to state broadly and generally that a witness had given evidence in other cases, and therefore became unworthy of credit could only tend to increase the indisposition of respectable persons to come into Court as witnesses which was one of the social evils of India. **LALL BHAHAR LALL & GORPE BHEER**

[18 W. R., P. C., 285]

101. ——— Discrepancies in statements of witnesses — Discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses. **BHAR SING & KASTHATH TAWARI**

[3 D. L. R., A. C., 333]

102. ——— Ground for discrediting witness — A bare allegation by a defendant in his written statement, without any proof in support of it, that a certain person is his intimate enemy, is not sufficient to discredit that person's testimony. **KASTHATH SHARA & DWARKANATH SHAR**

[9 D. L. R., 215; 17 W. R., 550]

8. PRIVILEGE OF WITNESSES

103. ——— Exemption from appearance in Court — *Nature of civil proceedings, of, to appear in Court* — The prejudices of natives of rank to appear as witnesses in a Court of justice will not be allowed to relax the rule that the best evidence must be produced of which the case is susceptible. **RAM MOHAR MOOKJEE & KRISHNA DEB**

[1 Ind. Jur., O. B., 63; 7 W. R., F. B., 54.]

WITNESS—CIVIL CASES—*continued.*8. PRIVILEGES OF WITNESSES—*continued.*NURSING DEB *v.* RAM MOHUN MOOKERJEE[*Marsh.*, 176:1 *Hay*, 379*See* MANICKRAM *v.* RAMYAD RAM . 2 W. R., 63RADHA KISTO SINGH DEO *v.* GUDADHUR BANERJEE
[3 W. R., 453KALEE CHUNDER CHOWDHRY *v.* SURUT SOON-
DUREE DEBIA 18 W. R., 45

104. ———— Exemption from suit in respect of evidence—*Action for damages—False evidence.*—Witnesses cannot be sued for damages in respect of evidence given by them in a judicial proceeding. If their evidence be false, they should be proceeded against by an indictment for perjury. GUNESH DUTT SING *v.* MUGNEERAM CHOWDHRY
[11 B. L. R., P. C., 321: 17 W. R., 283

105. ———— Right of suit—*Slander—Slander uttered by witness whilst under examination in a judicial proceeding.*—A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness. The plaintiff sued to recover damages for slander, the statement complained of being alleged in the plaint to have been made by the defendant while being examined as a witness during the hearing of a case before a Magistrate. It was found that the statement was made in answer to questions put to the defendant as a witness and allowed by the Court as relevant to the case. The plaintiff alleged that the statement was made maliciously, that the defendant bore him a grudge, and that it was to give vent to that grudge and to injure his reputation that the statement was made. *Held* that the plaint disclosed no cause of action, and that the suit had been properly dismissed. BHIKUMBER SINGH *v.* BEOHARAM SIROAR. BHIKUMBER SINGH *v.* GOTI KRISTO DAS
[I. L. R., 15 Cal., 264

See CHIDAMBARA *v.* THIRUMANI

[I. L. R., 10 Mad., 87

106. ———— Defamation—*Penal Code, s. 500—Statement by witness.*—*M S* was convicted under s. 500 of the Penal Code of defaming *S S* by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. *Held* that the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury, and not for defamation. MANJAYA *v.* SETHA SHETTY
[I. L. R., 11 Mad., 477

107. ———— Cause of action—*Verbal abuse—Special damage.*—The plaintiff was cited as a witness by one *S* in a suit instituted by him against defendant. After plaintiff's evidence had been concluded, in which he stated that there was no enmity between him and defendant, the defendant was examined by the Court, and stated that there was enmity between him and the plaintiff, and on the Court inquiring to know what was the cause of enmity, defendant used words conveying the meaning that plaintiff's descent was illegitimate. *Held* by BRODHURST, J., that under the circumstances the state-

WITNESS—CIVIL CASES—*concluded.*8. PRIVILEGES OF WITNESSES—*concluded.*

ment complained of was made by defendant while deposing in the witness-box, and therefore absolutely privileged. *Per* MAHMOOD, J. (*contra*). that the question whether or not the statement complained of was made by defendant in course of his deposition, or after it was finished, and when he was no longer in the witness-box, had not been tried, and the order remanding the case for trial on the merits was right. Further, that the English law of slander as forming part of the law of defamation, and as such drawing somewhat arbitrary distinctions between words actionable *per se* and words requiring proof of special or actual damage, is not applicable to this country, either by reason of any statutory provision or by any uniform course of decision sufficient to establish such distinctions as part of the common law of British India; that whilst the English law of defamation recognizes no distinction between defamation as such and personal insult in civil liability, the law of British India recognizes personal insult conveyed by abusive language as actionable *per se* without proof of special or actual damage; that such abusive and insulting language, unless excused or protected by any other rule of law, is in itself a substantive cause of action and a civil injury, apart from defamation, and that malice is an element of liability for abusive and insulting language, and that such malice will be presumed or inferred, unless the contrary is shown; that when the defendant is absolutely privileged and protected by reason of the office or occasion on which he employed such language, he renders himself subject to a civil liability for damage, irrespective of any plea of justification based upon proving the truth of the statements contained in the abusive and insulting language; that the rule of English law in regard to protection of a witness in regard to defamatory statements made in the witness-box is based upon a public policy which is equally applicable to insulting and abusive language used by such witness; and such statements when made in the witness-box are privileged and protected, even though made maliciously and falsely, so long as they are relevant to the inquiry in the broadest sense of the phrase; and that, even where such statements have no reference to the inquiry, the defendant may prove the absence of malice, and that they were made in good faith for the public good. DAWAN SINGH *v.* MAHIP SINGH I. L. R., 10 All., 425

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[I. L. R., 25 Cal., 803

1 PERSONS COMPETENT OR NOT TO BE WITNESSES.

1. — Judge—Competent witness—A Judge is a competent witness, and can give evidence in a case being tried before himself, even though he laid the complaint, acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. *QUEEN v. MERRA* 5130 . 4 B. L. R., A. Cr., 15; 13 W. R., Cr., 60

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2. — Magistrate—Evidence Act, s. 121—Power of Sessions Judge to compel Magistrate to give evidence—Privilege of witness—A Sessions Judge sitting, in the course of a trial, as regards the examination of the accused person taken by the committing Magistrate, that the provisions of s. 343 of Act X of 1872 had not been

WITNESS—CRIMINAL CASES

—continued.

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—continued.

fully complied with, summoned the committing Magistrate and took his evidence that the accused person duly made the statement recorded. The Magistrate of the district objected to this proceeding of the Sessions Judge, contending that it was "contrary to law." The Sessions Judge referred the question, whether or not his proceeding was contrary to law, to the High Court. *Per STUART, C.J., PRARSON, J., OLDHILD, J., and STRAIGHT, J.*—That the privilege given by s. 121 of Act I of 1872 is the privilege of the witness, i.e., of the Judge or Magistrate of whom the question is asked: if he waives such privilege, or does not object to answer such question, it does not lie in the mouth of any other person to assert the privilege: the reference, the objection not having been taken by the Subordinate Magistrate, but the Magistrate of the district, should be answered accordingly. *Per SPANKIE, J.*—That a Sessions Judge, while trying a case, cannot compel a committing Magistrate to answer questions as to his own conduct in Court as such Magistrate. *EMPEROR OF INDIA v. CHIDDA KHAN*

[I. L. R., 3 All., 573]

3. — *Judge trying case—Magistrate witness of facts.*—In a case in which a Deputy Magistrate took an active part in the capture of parties charged with having been members of an unlawful assembly,—parties whom he himself tried on that charge,—it was held that he was bound to state to the accused, so far as he could, what were the facts he himself observed, and to which he himself could bear testimony; and the prisoner in such situation had a right, if he thought it desirable, to cross examine the Judge, whose evidence should be recorded, and form part of the record in the case. The proper course, however, for the Deputy Magistrate to have taken in this case would have been to decline to try the case, and to ask that it should be undertaken by some other Judge. *IN THE MATTER OF THE PETITION OF HERRO CHINDER PAUL*

[20 W. R., Cr., 76]

4. — *Conviction, Illegality of.*—A Magistrate cannot himself be a witness in a case in which he is the sole judge of law and fact. *Per MARKBY, J.*—Where in such a case he has given his evidence and convicted the accused, his having so acted makes the conviction bad. *Per PRINSEP, J.*—The conviction is not absolutely bad. It is open to the Court to uphold the conviction, if it is of opinion that, after rejecting the Magistrate's evidence, there is other evidence sufficient, if believed to support the conviction. *EMPEROR v. DONNELLY*

[I. L. R., 2 Calc., 405]

5. — *Magistrate sitting on Bench in Appellate Court—Liability to be examined as witness.*—It is undesirable that Magistrates, whose decisions are under appeal, or who have been engaged in promoting the prosecution as police officers concerned in a case, should sit on the Bench beside or converse privately in Court with the Judge

WITNESS—CRIMINAL CASES

—continued.

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—continued.

who is engaged in trying the prisoner's appeal. If the Appellate Court wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate on oath or solemn affirmation in the same manner as an ordinary witness. *REG. v. KASHINATH DINKAR*

[8 Bom., Cr., 128]

6. — *Examination of Magistrate trying case.*—Case in which the High Court permitted a Deputy Magistrate to be examined on behalf of a petitioner whose case was investigated by the Deputy Magistrate. *QUEEN v. MUDHOOSOOTEN ROY*

16 W. R., Cr., 49

See s. 121 (1) THE EVIDENCE ACT, 1872.

7. — *Prisoner—Tendering pardon to prisoner.*—Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. *QUEEN v. GAGALU*

[6 B. L. R., Ap., 50: 12 W. R., Cr., 80]

8. — *Co-defendants, Examination of, as witnesses.*—Where there is no community of interest, any one of a number of prisoners jointly indicted may be called as a witness either for or against his co-defendants. *QUEEN v. ASHURUFF SHEIK*

6 W. R., Cr., 91

9. — *Prisoners tried together jointly—Examination of one as witness against another.*—Where two prisoners are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other. *IN THE MATTER OF DAVID*

5 C. L. R., 574

10. — *Person brought up with accused and not discharged.*—A person apprehended by the police and brought before the Magistrate with the accused is, though not discharged by the Magistrate, a competent witness against the accused, provided he be not charged along with the accused. *REG. v. NARAYAN SUNDAR*

5 Bom., Cr., 1

11. — *Evidence of woman on charge of adultery.*—A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. *IN RE BECHOO*

6 W. R., Cr., 92

12. — *Person against whom affiliation order is sought—Criminal Procedure Code (1892), s. 488—Order for maintenance.*—A person against whom an order for maintenance under s. 488 of the Code of Criminal Procedure is sought is a competent witness on his own behalf in such proceedings. *HIRA LAL v. SAHEB JAN*

[I. L. R., 18 All., 107]

See *NUR MAHOMED v. BISMULLA JAN*

[I. L. R., 16 Calc., 781]

13. — *Evidence Act, s. 118—Competency of persons of tender years.*—The competency of a person to testify as a witness is a condition precedent to the administration to him

WITNESS—CRIMINAL CASES

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1 PERSONS COMPETENT OR NOT TO BE WITNESSES—concluded.

of an oath or affirmation and is a question distinct from that of his credibility when he has been sworn or has affirmed. In determining the question of competency, the Court, under s. 118 of the Evidence Act

standing, he is able to give a rational account of what he has seen or heard or done on a particular occasion. If a person of tender years or of very advanced age can satisfy these requirements, his competency as a witness is established. *QUEY FURPASS v LAL SAHAI* I L R., 11 All., 183

14 ——— Evidence Act (I of 1872), s. 118—Evidence of a witness illegally pardoned by the police—Meaning of "accused" in s. 342 of the Code of Criminal Procedure (Act X of 1892)—During the course of a police investigation into a case of house-breaking and theft,

was admissible though he had been illegally interviewed by the police. Held also that by the word "accused" in s. 342 of the Code of

15 ——— Accused persons under trial separately for a substantive offence and for abetment of that offence competent witnesses on each other's behalf—Criminal Procedure Code (1892) s. 812—Prisoner A was tried for an offence under s. 403 of the Indian Penal Code and was convicted but was sent to a Magistrate of higher powers than the convicting Magistrate to be sentenced. Whilst the case was pending before the second

he and the circumstances to his giving evidence for P and that B's application ought to have been granted. *QUEY FURPASS v TIBREY SAHAI*

I L R., 20 All., 420

= SUMMONING WITNESSES

10 ——— Dispensing with personal attendance of witnesses—Deposits—Trial before Sessions Court—It is only in extreme cases of delay or expense that the personal attendance of a

WITNESS—CRIMINAL CASES

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2 SUMMONING WITNESSES—continued

witness before the Court of Session should be dispensed with and the evidence given by him before the committing Magistrate referred to. *FURPASS v MUKH* I L R., 2 All., 640

17 ——— Application to enforce attendance of witnesses—Witnesses for defence—Examination of accused—In a case under Ch. XX, Code of Criminal Procedure 1811 it was incumbent on the accused either to produce their witnesses or to apply beforehand for a summons to enforce the attendance of any witness who was not likely to appear without a summons; it was not necessary in

18 ——— Discharge of witness from attendance—It is incumbent upon a Court when it discharges a witness from the duty of attendance before the trial is ended to ascertain from the accused whether he has or is likely to have any need of the witness's testimony and if he has such need then to take such steps for insuring the presence of the witness at the required time as may be necessary. *KUTERCHANDAN SINGH v PANDANATH MENDRA* [22 W. R., Cr., 44]

19 ——— Discretion of Court as to summoning witnesses—Criminal Procedure Code 1872 s. 192—Discretion of Magistrate as to examining witnesses—It is entirely within the discretion of a Magistrate conducting a trial in a warrant case to admit evidence on behalf of either side at any stage of the trial, s. 192 Act X of 1872, applying to such a case but the Magistrate in exercising the discretion conferred on him by this section, ought to have good reason for allowing witnesses on the part of the prosecution to be introduced in the midst of the case of the accused. *QUEY FURPASS v TIBREY SAHAI* 21 W. R., Cr. 61

20 ——— Duty of Court as to summoning witnesses—Criminal Procedure Code, 1872 s. 539—Adjournment for appearance of witnesses for defence—Certain persons were charged before the Magistrate with rioting, and being called upon for their defence several witnesses were summoned on the 11th Nov., morning was issued for their appearance but they were not found. The accused then applied for further time for the appearance

discretion have adjourned the case. Held further, per JACKSON J. that the provisions of s. 539 of the Criminal Procedure Code is, that if among the persons named by the accused as witnesses the Magistrate considers that any witness is likely to be the purpose of a trial on any day, he is to exercise his discretion and enquire whether such witness is

WITNESS—CRIMINAL CASES —continued.

2. SUMMONING WITNESSES—continued.

material; but that the section is not intended to enable the Magistrate to enquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused; and further, that in the present case there was not any purpose of vexation or delay, and that by the refusal to grant further time the accused had been probably prejudiced in their defence. *EMPRESS v. RAJCOOMAR SINGH* I. L. R., 3 Calc., 573

S. C. IN THE MATTER OF THE PETITION OF RAJCOOMAR SINGH 2 C. L. R., 62

21. ———— *Obligation to summon witnesses—Criminal Procedure Code, 1861, Ch. XIV.*—In a case tried under the provisions of Ch. XIV of the Code of Criminal Procedure, the accused were entitled to have their witnesses summoned, and a Magistrate had no power to refuse to summon them. *QUEEN v. DOORGAGUTTY* [11 W. R., Cr., 55

22. ———— *Discretion of Magistrate—Criminal Procedure Code, 1861, s. 262.*—Held by *BAYLEY, J. (MARKBY, J., dubitante)*, that a Magistrate had a discretion, under s. 262 of the Code of Criminal Procedure, to summon a witness when he was likely to give material evidence on behalf of the accused. IN THE MATTER OF THE PETITION OF AMEER CHAND NOHATTA. *QUEEN v. AMEER CHAND NOHATTA* . . . 13 W. R., Cr., 63

23. ———— *Forcibly rescuing cattle—Act III of 1857, s. 13—Criminal Procedure Code, 1861, s. 262—Summoning witnesses.*—In a case of forcibly rescuing cattle under s. 13, Act III of 1857, in which the accused did not summon any witness, it was held that, even if the accused wanted them summoned, the Magistrate, under s. 262 of the Code of Criminal Procedure, need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily. *AKBAR TAGUDGEER v. PUNCHOO BISWAS* 10 W. R., Cr., 42

24. ———— *Duty of parties—Criminal Procedure Code, 1861, ss. 261, 262—Attendance of witnesses.*—In a case under Ch. XV of the Code of Criminal Procedure, it was expected that parties would bring their own witnesses with them. If they required the attendance of any witness, they should apply to the Magistrate to cause his attendance; and where they did not so apply, it was sufficient if the Magistrate recorded in his judgment the substance of the defendant's answer. *BAGDEE MANJEE v. MOHINDRO NARAIN* [10 W. R., Cr., 16

25. ———— *Criminal Procedure Code, 1861, s. 186.*—In the case of a charge of an offence triable by the Court of Session alone, the Magistrate was bound, under s. 186 of the Criminal

WITNESS—CRIMINAL CASES —continued.

2. SUMMONING WITNESSES—continued.

Procedure Code, to summon the complainant's witnesses. *QUEEN v. ZAKIR ALLY* . 8 W. R., Cr., 4

26. ———— *Criminal Procedure Code, 1861, s. 375—Accused person, Right of.*—An accused person is entitled to have examined as a witness any person named in his list of witnesses delivered to the Magistrate; and the Magistrate should take measures to enforce the attendance of such person. *QUEEN v. ISHAN DUTT* [6 B. L. R., Ap., 88: 15 W. R., Cr., 34

27. ———— *Right of accused to have witness summoned in his defence when he has refused to give in a list in the Magistrate's Court—Criminal Procedure Code (1882), s. 211.*—If an accused person, on being called upon under s. 211 of the Code of Criminal Procedure to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such list, he cannot compel the Magistrate after committal to issue any summonses for witnesses on his behalf. Neither under such circumstances will the Sessions Judge be obliged to issue summonses for the attendance of such witnesses unless he is satisfied that their evidence may be material. *Queen-Empress v. Har Gobind Singh, I. L. R., 14 All., 242*, referred to. *QUEEN-EMPRESS v. SHAKIR ALI* I. L. R., 19 All., 502

28. ———— *Criminal Procedure Code (Act XXV of 1861), ss. 188, 207, 227, and 228—Arrest and detention of witnesses.*—S. 207 of the Criminal Procedure Code gave no power to the Magistrate to call up and examine witnesses for the defence whose names have been given in a list, under s. 227, when the prisoners reserve their defence for the Court of Session; but under s. 228 he was bound to summon them to give evidence before the Court of Session. IN THE MATTER OF MAHESH CHANDRA BANERJEE. *QUEEN v. PURNA CHANDRA BANERJEE. QUEEN v. KALI SIKKAR* [4 B. L. R., Ap., 1: 13 W. R., Cr., 1

29. ———— *Credibility of witnesses*—It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence. IN THE MATTER OF THE PETITION OF MAHIMA CHANDRA SHAH . 4 B. L. R., Ap., 78: 15 W. R., Cr., 15

30. ———— *Criminal Procedure Code, 1861, ss. 186, 262.*—S. 186 of the Code of Criminal Procedure referred to cases under Ch. XII, which were triable by the Court of Session, and not to cases under Ch. XV, which were triable by a Magistrate. To the latter cases s. 262 applied. *BOIDDONATH BANIA v. BHEEDOO DOSS* [9 W. R., Cr., 3

31. ———— *Right of accused to have witnesses summoned—Criminal Procedure Code, 1872, s. 363.*—Under s. 363, Code of Criminal Procedure, a prisoner was entitled, as a matter of right, to have any witnesses named in the list which

WITNESS—CRIMINAL CASES

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2. SUMMONING WITNESSES—continued

he delivered to the Magistrate, summoned and examined **QUEEN v. PROSVAYO COOMAR MORLO**

[23 W. R., Cr. 58]

32.—*Criminal Procedure Code, 1861, s. 253*—Under s. 253 of the Criminal Procedure Code, 1861, it was imperative on the Magistrate to summon the witnesses named by the prisoner **QUEEN v. MUD-COODREY** 23 W. R., 148

33.—*Summoning witnesses for accused—Criminal Procedure Code (Act XXV of 1861) s. 253—Per AIRBELI, J.*—In a trial under Ch. XIV of the Criminal Procedure Code, the Magistrate was not bound, under s. 253, to summon any witness whom the accused might require. It was only discretionary with him to do so, and in the circumstances of the present case he exercised his discretion rightly in refusing to summon the witnesses asked for **Per AIRBELI, J. (dissenting)**—The right of an accused to have witnesses for his defence summoned during the pendency of the trial is an ordinary and natural right, and this right was not taken away, but affirmed by s. 253; the Magistrate was bound to summon the witnesses, though it was discretionary with him to adjourn the trial. In the present case treating it as a matter of discretion only, the Magistrate was wrong in refusing to summon the witnesses required **QUEEN v. BHOLAWATH MOOKERJEE**

[7 D. L. R., 504. 10 W. R., Cr. 28]

34.—*Discretion of Magistrate—Criminal Procedure Code, 1861, ss. 253, 262, 263*—s. 253 of the Criminal Procedure Code did not apply to cases triable under Ch. XV of that Code; and ss. 262 and 263 were applicable when the offence was not punishable with more than six months' imprisonment; and it was in the discretion of the Magistrate to summon the witnesses for the defence, if he considered their evidence

voluntarily appear for the purpose of being examined at the time and place appointed for the hearing of the complaint. **QUEEN v. MONTERE**

[23 W. R., 303]

35.—*Discretion of Magistrate—Criminal Procedure Code, 1861, ss. 227, 228*—Where a prisoner, under s. 227, Code of Criminal Procedure, gave in a list of the witnesses he wished to summon, after his case had been committed, the Magistrate was bound to exercise his discretion upon the point, and to state whether he would summon the witnesses or not, and he ought to state his reasons for not doing so. If he took the witnesses were included in the list for the purpose of delay, he should proceed under s. 228 of the Code. **QUEEN v. RAJCOOMAR MOOKERJEE** 19 W. R., Cr., 14

36.—*Discretion of Magistrate—Criminal Procedure Code, 1861, ss. 215, 262*—It was not incumbent on a Magistrate

WITNESS—CRIMINAL CASES

—continued

2. SUMMONING WITNESSES—continued

to summon every person named as a witness by the complainant s. 215 except s. 3, of the Criminal Procedure Code, 1872 must be read with s. 22, which vests in a discretionary power in the Magistrate. **JELDHARI SIVON v. SURESH CHAND DOTAL**

[23 W. R., Cr. 6]

See, **LOWEST, EMPRESS v. HERATULLA**

[L. L. R., 1 Cal., 389]

EMPRESS OF INDIA v. HANBI

[L. L. R., 2 All., 417]

QUEEN v. PRASADRAMA NAIR

[L. L. R., 4 Mad., 320]

AKOYMOTOS

8 Mad., App., 6

37.—*Criminal Procedure Code, 1861, Ch. XII*—In a case of an offence (such as hurt, under s. 323, Penal Code) p...
at...
or...
Q...

38.—*Criminal Procedure Code, 1861, s. 131* Claims to stolen property.—Petitioner was charged with the theft of certain money found in his house and acquitted. Proclamation having been made for claimant's to come in and claim the property no one appeared whereupon petitioner preferred his claim and asked the Assistant Magistrate to summon certain witnesses but the Assistant Magistrate refused to do so, and allowed his claim, the Magistrate on appeal declining to interfere. On reference by the Judge the High Court held that the Assistant Magistrate was bound to summon the witnesses named by the petitioner and aside that officer's order, and directed him to dispose of the case after taking due steps for securing the attendance of the witnesses in question. **POORNAN BAROO v. GOVERNMENT** 18 W. R., Cr., 6

39.—*Issues of summons—Criminal Procedure Code (Act XXV of 1861), s. 319*—Although there was no mention in Ch. XXII of Act XXV of 1861 of any particular provisions under which witnesses might be summoned, yet it was the duty of the Court, if parties could not procure the attendance of their witnesses, to issue summonses for their attendance. **IN THE MATTER OF THE PETITION OF SHAMASCHER MAMMUN**

[D. L. R., App., 42]

SHAMASCHER MAMMUN v. ANANDAMAYE DASTA 18 W. R., Cr., 64

40.—*Ground for postponement of case*—A Magistrate was held to be right, under the circumstances, in postponing the case for the purpose of summoning witnesses for one of the parties. **IN THE MATTER OF THE PETITION OF JAYINIA CHANDRA GUPTA** 19 D. L. R., App., 20

41.—*Non-attendance of witnesses—Criminal Procedure Code 1861 s. 147*—Ground for adjournment of trial—In a trial held

WITNESS—CRIMINAL CASES —continued.

2. SUMMONING WITNESSES—continued.

under Ch. XV of the Criminal Procedure Code, it was not an irregularity to adjourn the trial, under s. 269, for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial. *QUEEN v. DIXON ROY*

[16 W. R., Cr., 21

42. ————— *Refusal of a Magistrate to summon prisoner's witnesses—Criminal Procedure Code (Act X of 1872), s. 359.*—A Magistrate was not at liberty to refuse to summon a witness tendered by an accused person, except on the grounds specified in s. 359 of the Criminal Procedure Code; and if he did refuse, he was bound to proceed under that section. The fact that the accused declines to examine a witness is no reason for refusing to summon him to meet fresh evidence given subsequent to the defence being closed. *IN THE MATTER OF THE PETITION OF DEELA MAHTON v. SHEO DYAL KOERI* . . . I. L. R., 6 Cal., 714

S. C. IN THE MATTER OF DEELA MAHTON

[S. C. L. R., 70

48. ————— *Criminal Procedure Code, 1872, s. 359—Witness for the defence—Failure to attend—Refusal to re-summon.*—On the 30th March 1881 an accused person on his trial before a Magistrate asked that a certain witness might be summoned on his behalf. The Magistrate ordered a summons to be issued for the attendance of such witness on the 18th April, to which day the further hearing of the case was adjourned. There was some delay in the service of the summons, and such witness did not attend on that day. The Magistrate refused an application by the accused for the issue of a second summons to such witness, with reference to s. 359 of Act X of 1872, on the ground that such application was not made in "good faith." *Held* that the provisions of s. 359 of Act X of 1872 were clearly inapplicable to the case as it stood before the Magistrate on the 18th April, and he was bound to make a further attempt—the first attempt seemed to have been nominal merely—to secure the attendance of the absent witness. *EXPRESS v. RUKN-UD-DIN* . . . I. L. R., 4 All., 5

44. ————— *Witness for defence—Refusal by Magistrate to summon witness under Criminal Procedure Code, 1882, s. 216—Witness summoned by Sessions Court—Criminal Procedure Code, 1882, ss. 291, 540.*—Upon the committal of certain persons for trial before the Sessions Court for offences under the Penal Code, each of the prisoners, under s. 211 of the Criminal Procedure Code, gave in a written list of the persons whom he wished to be summoned to give evidence at the trial. On each of these lists the name of a particular person was entered, who objected under s. 216 to being summoned, on the ground that the summons was desired for vexatious purposes only and that there were no reasonable grounds for believing that any evidence he could give would be material. Upon this objection, the committing Magistrate passed an order requiring

WITNESS—CRIMINAL CASES —continued.

2. SUMMONING WITNESSES—continued.

the prisoners to satisfy him that there were reasonable grounds for believing that the objector's evidence was material, and, having heard arguments on both sides, passed an order refusing to issue the summons. The only ground stated by the Magistrate for this order was that he thought the reasons assigned for the application to have the objector summoned were insufficient. Subsequent to the order, and before the trial in the Sessions Court had begun, the Sessions Judge, upon an application filed on behalf of the prisoner, passed an order directing that the objector should be summoned to give evidence. The order assigned no reasons, and was passed in the absence of the objector or of any person representing him, and without notice to show cause being issued to him. The objector applied to the High Court for revision of the order on the ground that the Sessions Judge had no jurisdiction to make it. *Held* that, when a Magistrate refuses, under s. 216 of the Criminal Procedure Code, to summon a witness included in the list of the accused, he must record his reasons for such refusal, and such reasons must show that the evidence of such witness is not material; that the ground stated by the Magistrate, viz., that the reasons assigned for the application to have the objector summoned were insufficient, did not show that the evidence was not material; that the Sessions Judge had jurisdiction to make the order complained of; and that, even if he had not, it would not, under the circumstances, be desirable to interfere with his order in revision. *Per STRAIGHT, J.*, that s. 540 is not the only provision of the Criminal Procedure Code which confers on a Sessions Judge powers of the kind exercised by him in this case. Under s. 291, though the summoning of witnesses by an accused through the medium of the Sessions Judge is not a matter of right, yet the Judge has an inherent power, if he thinks proper to exercise it, to sanction the summoning of other witnesses than those named in the list delivered to the committing Magistrate. *IN THE MATTER OF THE PETITION OF THE RAJAH OF KANTIT* . . . I. L. R., 8 All., 668

45. ————— *Refusal to summon witnesses not declared material unless expenses are paid.*—A prisoner who was about to be committed to the Sessions Court presented to the Magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the Magistrate why he desired to summon the witnesses, the prisoner declined to state his reason. *Held* that the Magistrate was at liberty to decline to summon the persons named in the list on the prisoner declining to satisfy him that they were material witnesses; but the Magistrate ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited. The High Court called for the record for the purpose of seeing whether any of the persons named in the list were likely to be able to give material evidence.

SCBHARAYA MUDALI v. QUEEN . . . 4 Mad., 81

WITNESS-CRIMINAL CASES

—continued—

2 SUMMONING WITNESSES—continued

48 ——— *Omission to take*
steps to summon witnesses — A complainant in a case who mentioned the names of several witnesses on his behalf was requested to produce them on a certain date. Instead of doing that, he produced only two witnesses who were examined. *Held* that, as the complainant did not apply to the Magistrate to issue summonses on the other witnesses, or ask him to proceed under a 202, Code of Criminal Procedure, 1861, the Magistrate was not wrong in law in deciding the case on the evidence which was before him.

OREY e DOVOICE BEBA 15 W R. Cr. 87

47 ————— Refusal to sum-
mon witness for accused—Participation in charge
—Illegal conviction—A refusal to summon wit-
nesses cited by an accused, on the ground of their being
implicated in the charge vitiates the trial and con-
viction **RAM SINGHAI CHOWDHURY v SAKHER BANAR-**
DEB 8 B L R. 40. 05:15 W R. Cr. 7

48 *Refusal to sum-*
mon witnesses named for the defense—Where the
Sulardinate Magistrate convicted certain persons
without allowing them a proper opportunity for the
summoning and attendance of witnesses named for
the defense the High Court quashed the conviction
and directed the Sulardinate Magistrate to re-hear
the case. *ATOKMOOS* 5 Mad. Ap. 27

40 Criminal Procedure Code, 1872, s. 862—Warrant case—Refusal of Magistrate to summon witness named by accused—Error or defect in proceedings—Where the Magis

summon such person, as required by s. 262 of the Criminal Procedure Code—held that the conviction of the accused person must be set aside and the case be reopened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law IN THE MATTER OF THE PETITION OF SRI NARAYAN CHOW

50 ————— Criminal Procedure Code, 1852, ss 26, 25—Right of accused to call witness upon charge being framed in a warrant case—The accused was charged with having committed

produce witnesses if and when were possible. The Magistrate refused permission on the grounds that at the outset the accused had stated that he had no witnesses. The accused moved the High Court and stated by his affidavit that what he had meant was that he had no means present to Court. Held that under ss. 256 and 257 of the Criminal Procedure Code, the accused was, as of right, entitled to examine witnesses if and when were possible.

WITNESS-CRIMINAL CASES

—continued

2 SUMMONING WITNESS—continued

adjournment for the purpose of adjoining evidence in
defence. **EMMA ALE & JAGAT CHANDRA HANDEK**
11 C. W. N. 313

51. *Right of accused to have witnesses summoned and re-heard—Criminal Procedure Code (Act 2 of 1932), s. 537 (a), s. 537—Commencement of proceedings—Interlocutory orders Trial Meaning of Right to have witnesses summoned and re-heard—Legal aid—Refusal to recall witnesses—An accused person does not have the right of having the witnesses summoned and re-heard under (a), s. 537, of the Criminal Procedure Code, but is an interlocutory applicant for enforcement of the evidence of certain witnesses has been made a ground of appeal at the trial, but before the trial is a plea to the trial. The proper time for making such application is when the trial commences before the Magistrate. The expression "trial" means the proceedings which commence when the case is called on with the Magistrate on the bench the accused is the dock, and the representatives of the prosecution and for the defence, if the accused be tried in person in Court for the hearing of the case. s. 537 of the Criminal Procedure Code can be read with the defect in the proceedings by reason of the Magistrate's refusal to summon and re-hear the witnesses in continuation of prov (a), s. 50 GORRER NINDA & CO. LTD. LONDON*

52. *Fight of a combat*
—Compelling attendance of witnesses—*Section 237*—*Criminal Procedure Code (Act 1 of 1932)*
—237—Certain witnesses who had been summoned for the accused failed to appear on the day of trial and the Deputy Magistrate refused to adjourn the hearing or to issue fresh process for their attendance of the defendant's witnesses on the ground that they were all friends of the accused who would come to Court if the accused denied it. The witnesses were convicted. *Held* the court was bound to issue the Magistrate having once granted process, he was bound to assist the accused in effecting their attendance of his witnesses. *QUEEN V. JAGGEE S. HANAYIA CHOWDHURY* I L R. 10 Cal. 801

63 - *Never endeavor
of witness, inquiry into reasons for criminal
Secondary Code 1-51 & 2-1 - It was held that
any jury shall be made in the course given by
a person for the court to read a witness before
enforcing a fine for each person who is
that the Sessions Judge or other authority shall
fail by exercise the duty of a person to be
the Criminal Procedure Code. Q. 1000 -
has in an interview with a N.W. 113*

54. _____ Under no circumstances will I appear in any way - I am prepared to appear and participate in the trial of the case by means of a representative to appear before the court.

WITNESS—CRIMINAL CASES

—continued.

2. SUMMONING WITNESSES—continued.

proper course to enforce attendance is by summons and, if that fails, by warrant. ANONYMOUS

[4 Mad., Ap., 6

See ANONYMOUS . . . 4 Mad., Ap., 17

VENKATAPPAH v. PAPAMMAH . . . 5 Mad., 132.

55. ————— *Criminal Procedure Code, 1861, s. 191—Warrant to enforce attendance of witnesses.*—A Magistrate was not bound, under s. 191 of the Code of Criminal Procedure, to enforce the attendance of witnesses by warrant except upon proof of due service of summons. IN THE MATTER OF THE PETITION OF ABDOOR RUHMAN [7 W. R., Cr., 37

QUEEN v. SUTHERLAND. QUEEN v. NABAIN SINGH . . . 14 W. R., Cr., 20

56. ————— *Criminal Procedure Code, ss. 76, 81, and 160—Investigation by police—Power of Magistrate to issue warrant for arrest and production of witness—Penal Code, s. 174.*—Where a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the police, and in attempting to execute such warrant the police arrested the wrong person and were assaulted in the attempt,—*Held* that, apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a police officer, but only before his own Court under ss. 76 and 81 of the Code of Criminal Procedure. *Held* also that, as the investigation was held by a police officer under Ch. XIV of the Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under s. 160 of the Code of Criminal Procedure, and, on failure by her to comply with such order, prosecute her under s. 174 of the Penal Code. QUEEN-EMPRESS v. JOGENDRA NATH MUKERJEE

[I. L. R., 24 Cal., 320
1 C. W. N., 154

57. ————— *Issuing summons to witnesses out of jurisdiction.*—Magistrates may, under the Criminal Procedure Code, issue summonses for service upon witnesses beyond the limits of their districts. (COLLET, J., dissenting.) ANONYMOUS [3 Mad., Ap., 5

58. ————— *Service of summons—Affixing summons to door of house.*—Service of summons on a witness by affixing it to the door of his house was held to be no evidence of his having received it, in a charge brought against him of disobeying the summons. ANONYMOUS [6 Mad., Ap., 29

59. ————— *Service of summons.*—The mere showing to a witness of a summons issued under s. 186 of the Criminal Procedure Code, 1861, is not sufficient service. Either the original

WITNESS—CRIMINAL CASES

—continued.

2. SUMMONING WITNESSES—concluded.

should be left with the witness, or it should be exhibited to him, and a copy of it delivered or tendered. REG. v. KARSANLAL DANATRAM

[5 Bom., Cr., 20

3. AVOIDING SERVICE.

60. ————— *Warrant for apprehension of witness—Committal of witness in default of appearance—Criminal Procedure Code, 1861, s. 188.*—S. 188 only empowers a Magistrate to issue a warrant for the apprehension of a witness when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a Magistrate to commit a witness. IN THE MATTER OF MAHESH CHANDRA BANERJEE. QUEEN v. PURNA CHANDRA BANERJEE. QUEEN v. KALI SIKKAR

[4 B. L. R., Ap., 1; 13 W. R., Cr., 1

4. SWEARING OR AFFIRMATION OF WITNESSES.

61. ————— *Oath or affirmation—Criminal Procedure Code, 1861, s. 199—Memorandum of deposition.*—A witness may be examined either on oath or on solemn affirmation, but he cannot both be sworn and put on solemn affirmation at the same time. The memorandum required by s. 199 of the Code of Criminal Procedure should always be appended to the depositions. QUEEN v. HOSSEIN SIRDAR [18 W. R., Cr., 17

5. EXAMINATION OF WITNESSES.

(a) GENERALLY.

62. ————— *Power of Court to dispense with examination of witnesses—Criminal Procedure Code, 1872, s. 362.*—S. 362 of the Code of Criminal Procedure did not give a Magistrate discretion to dispense with the examination of witnesses summoned by the prosecution. QUEEN v. PARASURAMA NAICKAR . . . I. L. R., 4 Mad., 329

63. ————— *Commitment without examining witnesses.*—Where a Magistrate committed a person charged with perjury in a trial before himself to the Sessions without examining the witnesses for the prosecution,—*Held* that the commitment was illegal. QUEEN v. CHINNA VEDAGIRI CHETTI . . . I. L. R., 4 Mad., 227

QUEEN v. SREENATH MOOKHOPADHYA [7 W. R., Cr., 45

DINONATH GOPE v. SARODA MOOKHOPADHYA [7 W. R., Cr., 47

64. ————— *Power of interference of High Court—Criminal Procedure Code, 1861, s. 363.*—Where it was not shown that there were any witnesses forthcoming for examination other than those whom the Sessions Judge did

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

mentioned in expl. 2 of s. 87 of Act IV of 1877, is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo*. *EM-PRESS v. CHUNDER NATH DUTT*

[I. L. R., 5 Calc., 121: 4 C. L. R., 305]

74. ——— Witnesses for prosecution — *Witness examined by prosecution after defence.* — It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner. *QUEEN v. CHOTAY LAL*

3 N. W., 271

QUEEN v. SHAMKISHORE HOLIDAR

[13 W. R., Cr., 36]

Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence, in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to s. 439 of the Code of Criminal Procedure. *QUEEN v. SHAM KISHORE HOLIDAR*

13 W. R., Cr., 36

75. ——— *Criminal Procedure Code, 1861, s. 372—Recalling witness for prosecution.* — Under s. 372 of the Code of Criminal Procedure, an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was recalled after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. *QUEEN v. ASSANOOLLAH*

[13 W. R., Cr., 15]

76. ——— Witnesses for defence — *Criminal Procedure Code, 1861, s. 372—Duty of Court as to witnesses for defence.* — Under s. 372 of the Code of Criminal Procedure, the accused should be asked, at the end of the case for the prosecution, to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence. *QUEEN v. MOOKUN*

[12 W. R., Cr., 22]

77. ——— *Omission to examine witnesses for accused.* — The Court quashed the sentence which was passed upon a prisoner who had not been asked if he had any witness to call, although he was tried at the same time with others who had been so asked. *BHUGWAN v. DOYAL GOPE*

[10 W. R., Cr., 7]

78. ——— *Criminal Procedure Code (Act XXV of 1861), s. 266—Witnesses attending voluntarily.* — In cases coming under Ch. XXV of Act XXV of 1861, to which s. 266

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

applied, and not s. 252, the Magistrate was not obliged to call on the accused to produce his witnesses, but he was bound to hear them if they attended voluntarily, as by s. 266, read with s. 262, they were supposed to do. *IN RE BHUKA ROY*

[7 B. L. R., 568 note]

S. C. BHUKHA ROY v. DHOTUN ROY

[10 W. R., Cr., 36]

79. ——— *Obligation of Magistrate to hear witnesses—Criminal Procedure Code, 1861, s. 266.* — S. 266 of the Code of Criminal Procedure only required the Magistrate to hear such witnesses as the accused shall produce in his defence. *ANONYMOUS*

4 Mad., Ap., 29

QUEEN v. AMEER CHAND NOHATTA

[13 W. R., Cr., 63]

80. ——— *Refusal of Court to allow witness for defence to be examined—Illegal conviction—Criminal Procedure Code (Act XXV of 1861), s. 266.* — Conviction set aside on the ground of the Magistrate's irregularity in refusing, in a trial before him under Ch. XV of the Criminal Procedure Code, to allow the examination of a witness who had been tendered on behalf of the accused. *QUEEN v. MAHIMA CHANDRA CHUCKERBUTTY*

[4 B. L. R., Ap., 77: 12 W. R., Cr., 77]

81. ——— *Criminal Procedure Code (1882), ss. 210 and 212—Sessions case—Defence reserved—Power of Magistrate to examine witnesses named for the defence.* — The fact that an accused person committed to a Court of Session by a Magistrate has reserved his defence, does not preclude the Magistrate from acting under s. 212 of the Code of Criminal Procedure, and examining any witnesses named by the accused as witnesses whom he intended to call in the Sessions Court. *IN THE MATTER OF THE PETITION OF RUDRA SINGH*

[I. L. R., 18 All., 380]

82. ——— *Criminal Procedure Code (1882), ss. 202 and 540—Summons case.* — Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code, — *Held* that the Magistrate was strictly within his rights under s. 540 of the Criminal Procedure Code in receiving fresh evidence after evidence on both sides had been taken, and the case adjourned for judgment, inasmuch as the case was still a pending case when such evidence was taken. *IN THE MATTER OF ANANDA CHUNDER SINGH v. BASU MUDH*

I. L. R., 24 Calc., 167

83. ——— *Witnesses under examination—Threatening of witnesses by Court.* — It is illegal on the part of a Court to threaten witnesses with the penalties of the law unless

WITNESS—CRIMINAL CASES —continued.

5. EXAMINATION OF WITNESSES—continued
they are evidently giving wilfully false evidence or persistently refusing to give evidence of facts which must be within their knowledge. *QUEEN v. EMERSON & HARGREAVES* 11 W. R., Cr., 11

[L. L. R., 14 All., 242]

84. — Recording evidence of witness—*Obligation to record evidence of witness.*—If a person is before the Court as a witness, his evidence must be recorded as the law directs, if he is not a witness, and is not examined as such, the Judge has no right to allude to his having made any statement. *QUEEN v. PROULCHAND alias PROULCHAND* 11 W. R., Cr., 11

85. — Note of deposition—*Criminal Procedure Code, 1861, s. 195.*—A separate note of each witness's deposition was required to be taken by a 195 of the Code of Criminal Procedure, 1861, which was not satisfied by a statement that a witness "deposes as last witness." *REG. v. DYNA VALAD BRESIM* 1 Bom., 61

86. — Mode of examination—*Examination in absence of accused.*—It is illegal to examine the witnesses for the defence and to pass sentence in the absence of the accused. *BINOOHAR v. ALLAH KOLITA* 1 B. L. R., 8, N., 6
QUEEN v. RAMNATH 7 W. R., Cr., 45

87. — Examination in absence of accused—Where witnesses are not examined in the presence of the accused, the conviction will be quashed. *QUEEN v. LALLA CHOWRY*

[2 N. W., 49]

QUEEN v. RAMNATH 7 W. R., Cr., 45

ANONIMOUS 1 Mad., Ap., 32

QUEEN v. RAJCOOMAR SINGH 11 W. R., Cr., 17

QUEEN v. RAMDHUN SINGH 11 W. R., Cr., 22

QUEEN v. RAM DASS ROISTON 11 W. R., Cr., 35

QUEEN v. RUSSELL DOSS 24 W. R., Cr., 70

ALI MEAN v. MAGISTRATE OF CHITTAGOON

[25 W. R., Cr., 14]

88. — Evidence not taken in presence of accused—*Criminal Procedure Code, 1861, s. 191.*—When the accused has been arrested, the evidence of a witness for the prosecution ought, under s. 191 of the Code of Criminal Procedure, to be taken in the presence of the accused. *QUEEN v. HOSSAIN ALI CHOWHURY*

[19 W. R., Cr., 74]

89. — *Criminal Procedure Code, 1872, s. 227.*—Evidence taken in absence

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WITNESS—CRIMINAL CASES —continued.

5. EXAMINATION OF WITNESSES—continued

80. — *Examination taken in absence of accused.*—*Warren's case.*—It is not irregular in a warrant case for a Deputy Magistrate to take the evidence of the complainant and certain witnesses on behalf of the prosecution in the absence of the accused. All that the accused has a right to expect after the charge has been framed is that the complainant and witnesses who had been examined in his presence before the charge was framed should be recalled for the purpose of cross-examination. *QUEEN v. KASTY SINGH QRIES v. HARGREAVES* 21 W. R., Cr., 61

81. — *Deposition taken in absence of accused.*—*Criminal Procedure Code, 1872, s. 227.*—s. 227 of the Criminal Procedure Code, 1872, which permitted the depositions of a witness to be taken in the absence of an accused person who had attended did not apply to a deposition taken before that Code was passed. Where s. 227 did apply, it was necessary to show that when the former deposition was taken the accused had attended, and after the present could not be arrested. *QUEEN v. FIDWANT HARGREAVES*

[21 W. R., Cr., 15]

82. — *Deputy Magistrate.*—*Examination in absence of accused.*—*Statements of witnesses.*—The Magistrate to whom a complaint was made examined certain persons on oath in the absence of the accused, merely for the purpose of ascertaining whether there was any, and what cause, about the prisoners, and he did not take down in writing the statements of the persons examined. Held that the Magistrate was wrong in examining the witnesses on oath in the absence of the accused for the purpose of finding out whether there was a cause, but that, having done so, he was not bound to take down their statements in writing. It was the matter of the testimony of Asadul Hossain. *EMERSON v. ASADUL HOSSAIN*

[L. L. R., 8 Cal., 774]

v. C. ISHAR AGGAR HOSSAIN 8 C. L. R., 126

83. — *Examination taken in absence of accused.*—*Criminal Procedure Code, 1872, s. 227.*—*Power to grant committal.*—An accused who was charged with murder was examined on oath, and the witnesses were examined on oath, under s. 227 of Act X of 1872 in his absence. The accused was subsequently arrested and committed to the custody of the evidence taken in his absence. It was held that the Magistrate had a proper basis for the grant of a committal order, and that the accused had no right to be recalled for the purpose of cross-examination. It was also held that the Magistrate was not bound to take down the statements of the witnesses in writing. It was the matter of the testimony of Asadul Hossain. *EMERSON v. ASADUL HOSSAIN*

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

of a prisoner's statement does not render it inadmissible. *EMPRESS v. SAGAMBUR*

[12 C. L. R., 120]

94. ————— *Reading deposition of witness.*

In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new and the witnesses had not been examined before. To read to a witness his deposition on a former trial is not an examination of the witness in the presence of the accused. *QUEEN v. KYAMUT W. R., 1864, Cr., 1*

QUEEN v. AFFAZUDDEEN W. R., 1864, Cr., 13

QUEEN v. KANYE SHEIKH

[W. R., 1864, Cr., 38]

QUEEN v. KALUNDAR DOSS . . . 2 N. W., 100

See also *QUEEN v. MOHUN BANTOR*

[22 W. R., Cr., 38]

95. ————— *Reading depositions instead of examining witnesses de novo.*

The High Court refused to interfere when the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo*. *PURMESSUR SINGH v. SOROOP AUDHI KAREE . . . 13 W. R., Cr., 40*

96. ————— *Criminal Procedure Code, 1882, s. 288—Trial before Court of Session—Evidence given before committing Magistrate used at trial to contradict witnesses.*

S. 288 of the Criminal Procedure Code was never intended to be used so as to enable a Court trying a cause to take a witness's deposition bodily from the committing Magistrate's record, and to treat it as evidence before the Court itself. *Queen v. Amanulla, 12 B. L. R., Ap., 15*, referred to. A Judge is bound to put to the witnesses whom he proposes to contradict by their statements made before the committing Magistrate the whole or such portions of their depositions as he intends to rely upon in his decision, so as to afford them an opportunity of explaining their meaning, or denying that they had made any such statements, and so forth. In a case in which the Sessions Court had neglected to apply the above rules, *STRAIGHT, J.*, quashed the conviction. *QUEEN-EMPRESS v. DAN SAHAI . . . I. L. R., 7 All., 362*

97. ————— *Witness offering hearsay evidence—Duty of Court.*

The moment a witness commences giving evidence which is inadmissible, e.g., hearsay evidence, he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the jury to reject the hearsay evidence, and to decide on the legal evidence alone. *QUEEN v. PITTAMBUR SIRDAR . . . 7 W. R., Cr., 25*

QUEEN v. KALI CHURN GANGOOLY

[7 W. R., Cr., 2]

98. ————— *Refreshing memory of witness—Ground for inspecting document to refresh memory of witness—Right to inspect docu-*

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

ments.—Per FIELD, J.—The grounds upon which the opposite party is permitted to inspect a writing, and to refresh the memory of a witness, are three-fold: (i) to secure the full benefit of the witness's recollection as to the whole of the facts; (ii) to check the use of improper documents; (iii) to compare his oral testimony with his written statement. *Per FIELD, J.*—The opposite party has a right to look at any particular writing before or at the moment when the witness uses it to refresh his memory in order to answer a particular question; but if he then neglects to exercise his right, he cannot continue to retain the right throughout the whole of the subsequent examination of the witness. *IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON. EMPRESS v. JHUBBOO MAHTON . . . I. L. R., 8 Calc., 739*

S. C. JHUBBOO MAHTON v. EMPRESS

[12 C. L. R., 233]

99. ————— *Memorandum made by police officer—Criminal Procedure Code, 1872, s. 119.*

In giving evidence a police officer may refresh his memory by referring to documents in which he has, under s. 119 of Act X of 1872, reduced into writing statements of persons examined by him during an investigation, but the documents themselves cannot be used as evidence, and a Judge should not read such documents to a jury in order to point out discrepancies between the evidence and previous statements of the witnesses. *ROGHUNI SINGH v. EMPRESS*

[I. L. R., 9 Calc., 455; 11 C. L. R., 589]

100. ————— *Memorandum made by police officer—Criminal Procedure Code (Act X of 1872), ss. 119 and 126.*

A prisoner on his trial is not entitled to insist that a memorandum made by a police officer under the provisions of s. 119 of the Code of Criminal Procedure shall, in the course of the examination of such officer, be referred to by the latter for the purpose of refreshing his memory. *Reg. v. Uttamchand Kapurchand, 11 Bom., 123*, distinguished. *IN THE MATTER OF THE PETITION OF KALI CHURN CHUNARI. EMPRESS v. KALI CHURN CHUNARI . . . I. L. R., 8 Calc., 154*

S. C. IN THE MATTER OF KALI CHURN CHUNARI

[10 C. L. R., 51]

101. ————— *Medical witness, Evidence of—Experts—Examination of medical witness examined before Magistrate—Criminal Procedure Code, 1872, s. 323.*

The evidence of a medical man who has seen, and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and

WITNESS—CRIMINAL CASES

—continued

5. EXAMINATION OF WITNESSES—continued
to ask the witness's opinion on those facts. S. 323 of Act X. of 1872 did not in any way preclude the

memory by referring to a report which he has made of his post-mortem examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom. ROOTH v. BROWN & LUTHERS.

[L. L. R., 9 Cal., 456; 11 C. L. R., 560]

102. — Treatment by Court of witnesses for defence.—When a prisoner makes a

(f) EXAMINATION BY COURT

103. — Examination of witness by Judge.—*Tridence Act, s. 139—Duty of Court in examining witnesses.*—At a trial before a

Held that such a course of procedure was irregular and opposed to the provisions of s. 139 of the Evidence Act. It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions, and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of the Act. ROOTH v. BROWN & LUTHERS.

[L. L. R., 9 Cal., 370; 7 C. L. R., 335]

(g) CROSS EXAMINATION.

104. — Duty of Court as to allowing cross-examination.—*Cross-examination of witnesses by accused.*—The Judge ought, if requested, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken for the prosecution by the committing Magistrate, but whose evidence is disputed with by the prosecutor at the trial. His refusal to do so is, however, not an error in law. REX v. HAYES & VASTAKHANI. 3 Bom. Cr., 85

WITNESS—CRIMINAL CASES

—continued

6. EXAMINATION OF WITNESSES—continued
the right to cross-examine the witnesses for the prosecution after their examination at the judicial inquiry before the Magistrate previous to commitment. The fact that the Criminal Procedure Code of 1872 contained an express provision to that effect, which was omitted in the Code of 1892 together with the provision of ss. 210 and 225 of the latter Code, must not be taken to show an intention on the part of the Legislature to deprive an accused of that right. The express provision in the Code of 1872 was probably thought by the Legislature when framing the Code of 1892, as being redundant seeing that the Evidence Act of 1872 which was passed at the same time as the Criminal Procedure Code of 1872 made sufficient provision on the subject. S. 201, moreover does not forbid a cross-examination before a charge is framed. It permits a further cross-examination expressly directed to the case found and embodied in the charge, and would enable an accused person, if he has reserved his cross-examination, to exercise his right at that time subject to a discretion given to the Magistrate by s. 27. Where depositions of witnesses for the prosecution before the Magistrate previous to commitment were taken without any cross-examination by the accused being allowed, it was held that such depositions were improperly treated as evidence in the Sessions Court as they had not been "fully taken" in the presence of the accused with the meaning of s. 248 of the Code. QUAY v. HARRIS. 11 Ind. 121; 21 Cal., 612

105. — Further cross-examination by accused.—*Criminal Procedure Code 1892 ss. 256, 257.*—Where an accused has been examined in his defence and the Magistrate, after hearing the evidence for the prosecution, framed a charge under s. 225 of the Criminal Code, and on the 6th June 1896 refused an application by the accused to resume on the prosecution witnesses for further cross-examination. On 17th June on the application of the accused citing some of those witnesses as his own witnesses the Magistrate summoned them, but on the 22nd, when the witnesses were present, he refused to allow the accused to cross-examine them, and, upon the accused declining to examine them as his witnesses, he withdrew them from the evidence on the record. Held that the Court was wrong in refusing permission to the accused to cross-examine the witnesses present in court on 22nd June. Held further that the accused was not a party of the right which he had by law of cross-examining the witnesses for the prosecution under s. 27 of the Criminal Procedure Code although they were summoned as his witnesses. His objection was a matter of fact. On 6th June he was not a party to the trial, and under s. 225 of the Code of the Criminal Procedure Act he was not a party to the trial. REX v. HARRIS. 11 Ind. 121; 21 Cal., 612

106. — Right to cross-examination.—*Right of an accused to cross-examine witnesses.*—The right of an accused to cross-examine witnesses is a matter of fact, and it is not a matter of law.

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

for the prosecution called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness. *QUEEN v. SURROOCHUNDER PAUL*

[12 W. R., Cr., 75

108. ————— Evidence Act,

s. 165—*Witness called by the Court.*—Witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right, and *à fortiori*, if such a witness is called and examined by the Court under s. 165 of the Evidence Act, the prisoner should be allowed to cross-examine. *EMPRESS v. GRIEN CHUNDER TALUKHDAR*

[I. L. R., 5 Calc., 614; 5 C. L. R., 364

109. ————— Witness called

by Court—*Tendering witnesses for cross-examination—Criminal Procedure Code (Act X of 1882), s. 540.*—In a trial before the Sessions Court the prosecution is not bound to tender for cross-examination all witnesses called before the committing Magistrate. The Court should not call a witness on whose evidence it could not put implicit reliance. *QUEEN-EMPRESS v. KALIPROSONNO DOSS*

[I. L. R., 14 Calc., 245

110. ————— Cross-examina-

tion of witness called by the Court—*Evidence Act (I of 1872), s. 165—Criminal Procedure Code (1882), s. 540.*—Where in the course of a criminal proceeding a Magistrate himself summoned a witness and examined her under s. 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross-examine the witness,—*Held* that the Magistrate was wrong in not allowing the complainant's attorney to cross-examine the witness when she was summoned. *Held* also that there is nothing in s. 165 debaring or disqualifying a party to a proceeding from cross-examining any witness summoned by the Court. *GOPAL LALL SEAL v. MANICK LALL SEAL*

[I. L. R., 24 Calc., 288

111. ————— Hostile witness

—*Evidence Act, s. 154.*—The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. *KALACHAND SIKKAR v. QUEEN-EMPRESS*

I. L. R., 13 Calc., 53

112. ————— Medical witness.

—As to cross-examination by accused of medical witness called in a professional capacity, see *QUEEN v. ISHUN DUTT*

[6 B. L. R., Ap., 88; 15 W. R., Cr., 34

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

113. ————— Evidence Act (II of 1855), s. 34—*Cross-examination on previous statements reduced to writing.*—The complainant's plea was held to be at liberty before the Deputy Magistrate to cross-examine the witnesses for the defence on points respecting which they had made statements before the Joint Magistrate, and he might do so as regards previous statements which were reduced to writing, without showing the writing. *S. 34, Act II of 1855, explained. TUKHEA RAI v. TUPSEE KOER*

15 W. R., Cr., 23

114. ————— Evidence Act, 1855, s. 23—*Cross-examination on previous statements reduced to writing.*—A witness, when under examination-in-chief before the Court of Session, should not have his attention directed to his deposition before the Magistrate. He might, under s. 23, Act II of 1855, be cross-examined as to previous statements made by him in writing, when his attention might be drawn to the parts of the former writing which were to be used for the purpose of contradicting him. *QUEEN v. RANCHOONDER SIKAR*

[13 W. R., Cr., 18

115. ————— Prosecution witness examined before the Magistrate but not called in the Court of Session—*Witness called by the defence—Cross-examination by defending counsel.*—Where the prosecution declined to call in the Court of Session a witness for the Crown who had been examined in the Magistrate's Court, and such witness was thereupon placed in the witness box by counsel for the defence, it was held that counsel for the defence was not entitled to commence his examination of the witness by questioning him as to what he had deposed in the Magistrate's Court. Questions as to his previous deposition were under the circumstances only admissible by way of cross-examination, with the permission of the Court, if the witness proved himself a hostile witness. *QUEEN-EMPRESS v. ZAWAR HUSEN*

I. L. R., 20 All., 155

116. ————— Right of witness on cross-

examination—*Right to qualify statements.*—A witness ought to be allowed on cross-examination to qualify or correct any statement which he has made in his examination-in-chief. *QUEEN v. TULSI DO-*

SADH

18 W. R., Cr., 57

117. ————— Right to recall witnesses

for cross-examination—*Cross-examination of,*

by accused—Witnesses for defence—Record of

evidence.—The charge having been read to the

accused person, he stated his defence to the same,

upon which the Magistrate, the witnesses for the

prosecution being in attendance, called upon the

accused to cross-examine them. The accused refused

to do so until he had examined the witnesses for the

defence who were not in attendance. The Magistrate

then discharged the witnesses for the prosecution and

adjourned the trial for the production of the witnesses

for the defence. *Held per SPANKIE, J.,* that the

accused was not entitled to have the witnesses for the

prosecution summoned, in order that they might be

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

sight of the main purpose of those proceedings and giving over-attention to matter of mere form. *NILKANTA SINGH v. QUEEN-EMPRESS*

[I. L. R., 20 Calc., 469]

126. ————— *Cross-examination—Right of co-accused to cross-examine witness called by another co-accused for defence where their cases are adverse—Evidence Act (I of 1872), s. 137.*—One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first. *RAM CHAND CHATTERJEE v. HANIF SHEIKH* . I. L. R., 21 Calc., 401

127. ————— *Cross-examination of prosecution witnesses before charge—Right of accused to have prosecution witnesses recalled after charge drawn up for purposes of cross-examination—Discretion of Magistrate—Criminal Procedure Code (Act V of 1898), ss. 254, 256, and 257—Penal Code (Act XLV of 1860), s. 342.*—After a charge has been drawn up, the accused is entitled to have the witnesses for the prosecution recalled for the purposes of cross-examination. S. 256 of the Code of Criminal Procedure gives the Magistrate no discretion in the matter. After a charge has been drawn up, it is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and, if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has been already some cross-examination before the charge has been drawn up does not affect this privilege. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application, on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. *ZAMUNIA v. RAM TAHAL*

[I. L. R., 27 Calc., 370
4 C. W. N., 469]

128. ————— *Summoning witnesses for prosecution for further cross-examination—Refusal of such application for inadequate reason—Criminal Procedure Code, 1898, s. 257.*—The mere fact that the witnesses for the prosecution had already been cross-examined is not a sufficient reason for refusing to re-summon them, unless the Magistrate expressly records his opinion that the application for the second cross-examination is within the terms of s. 257 of the Criminal Procedure Code for the purpose of vexation or delay or for defeating the ends of justice. An order refusing to re-summon witnesses without assigning any such reasons is not a proper order. When an application to re-summon witnesses for the prosecution was made, not on the day the accused were called on to make their defence, but on the following day,—*Held* that the delay of one day was in itself no sufficient reason for refusing the application. *SREENATH BARAI v. EMPRESS* . . . 4 C. W. N., 241

129. ————— *Criminal Procedure Code (Act V of 1898), ss. 256, 257—Cross-examination of witness for prosecution, Right of.—*

WITNESS—CRIMINAL CASES

—continued.

5. EXAMINATION OF WITNESSES—continued.

When after the charge was drawn the accused claimed the right to have the medical officer re-summoned for the purpose of cross-examination, and the Magistrate refused to allow process except on payment of fees for his attendance, and the Magistrate in his explanation to the High Court said that the accused had the opportunity to cross-examine the witness immediately after his examination-in-chief was concluded, but that he had declined to do so,—*Held* that under the terms of s. 256, Criminal Procedure Code, the accused was entitled to claim this as a matter of right, and that s. 257, Criminal Procedure Code, did not apply to the present case. *ISWAR CHUNDER RAUT v. KALI KUMAR DASS* . . . 4 C. W. N., 351

130. ————— *Cross-examination previous to framing of charge—Criminal Procedure Code, 1872, s. 218.*—An accused person was held to be not deprived of the right given him by s. 218, Act X of 1872, to recall and cross-examine the witnesses for the prosecution after the charge had been drawn up against him by reason of the witnesses having been cross-examined before the charge was framed. A Magistrate should not of his own motion discharge the witnesses for the prosecution until the accused person has exercised or waived the right of cross-examination given him by the section. When it becomes necessary to adjourn the hearing, the Magistrate should in all cases enquire of the accused if he desires to exercise his right of recalling the witnesses for the prosecution, or consents to the discharge of all or any of them. If the accused consents to their discharge, and they are discharged accordingly, he is not entitled to have them re-summoned as a matter of right. Where it became necessary to adjourn the hearing and the Magistrate did not call upon the accused to exercise his right under the section, and there was no sufficient proof that the accused consented to the discharge of the witnesses for the prosecution, it was held that the accused was entitled to have the witnesses, whom he desired to cross-examine at the further hearing re-summoned. *Quere*—If the Magistrate before granting an adjournment called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, whether the Magistrate would thereupon be at liberty to discharge the witnesses. *QUEEN v. JALL MAHOMED* . . . 6 N. W., 284

131. ————— *Right of accused to cross-examine witnesses—Examination of accused—Discretion of Magistrate.*—An accused should be allowed at preliminary inquiries before a Magistrate to cross-examine the witnesses; but whether the accused himself shall be examined upon the matter of the charge by the Magistrate is left entirely to the discretion of the Magistrate, and such discretion should not be exercised when the Magistrate thinks that the evidence for the prosecution does not disclose any proper subject of criminal charge against the prisoner. *QUEEN v. SHAMA SUTKER BISWAS* . . . 10 W. R., Cr., 25

WITNESS—CRIMINAL CASES

—continued

E. EXAMINATION OF WITNESSES—concluded.

132. ———— *Right of accused to recall witnesses for prosecution*—*Criminal Procedure Code (Act X of 1872), ss. 217, 219*—Reading ss. 217 and 218 of the Criminal Procedure Code together, it appears that, if an accused person desires to recall and cross-examine the witnesses for the prosecution, the time at which he should express such desire is when the charge is read over to him and he is called upon to make his defence; and

[I. L. R., 7 Cal., 28]

S. C. IN THE MATTER OF FAIZ ALI

[8 C. L. R., 325]

133. ———— *Cross examination of witnesses for the prosecution*—As a rule, the proper and convenient time for the purpose of cross-examination of the witnesses for the prosecution is at the commencement of the accused person's defence; but it is in the discretion of the Criminal Court to allow the accused to recall and cross-examine the witnesses for the prosecution at any period of the defence when the Court may think such a step right and proper. *KUNTERDHAR SINGH v. PANDRA MEHRA*. 22 W. R., Cr., 44

134. ———— *Refusal to allow*—*accused in small witness for the prosecution*—*W. R.*

witnesses, which ceased only when they themselves waived it; that Magistrates could waive all inconvenience to witnesses by asking accused persons on the drawing up of charges, whether they required the further attendance of the witnesses; and that the conviction must be set aside because the accused had not enjoyed the protection provided by the law. *QUEEN v. RAM KISHAN HALWAI*

[25 W. R., Cr., 48]

G. CONSIDERATION AND WEIGHT OF EVIDENCE.

135. ———— *Weight of evidence—Single witness—Evidence of fact*—The evidence of a witness is reliable, is sufficient to prove a fact. *ZALIM MISHRA v. KUNTER KOOB*

[11 W. R., 104]

BAHENDRA NARAIN v. KALLA MISHRA

[18 W. R., 341]

INDRANATH NARAIN DEB v. KUNTER KOOB

[10 W. R., 236]

136. ———— *Discrepancies in evidence of witnesses—Effect of discrepancies*—Discrepancies in the evidence of witnesses are not the less

WITNESS—CRIMINAL CASES

—concluded.

G. CONSIDERATION AND WEIGHT OF EVIDENCE—concluded.

destructive of their testimony because a greater accuracy on the part of the witnesses would have enabled them. *REG. v. HAIT PATEL* 11 Bom. Cr., 140

137. ———— *Consideration of evidence—Assumption of bad character of prisoner*—A Judge cannot properly weigh evidence which starts with an assumption of the general bad character of the prisoners. *QUEEN v. KAIT VAL*

[7 W. R., Cr., 103]

138. ———— *Value of evidence—False of evidence of medical witness*—In trying a prisoner charged with giving false evidence, a Sessions Judge rejected facts which were proved by the evidence of certain witnesses, because a medical officer gave it as his opinion that what the witnesses deposed to could not be true. *Held* that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. *QUEEN v. ANAND ALIT*

[11 W. R., Cr., 25]

139. ———— *Evidence disbelieved in some parts and accepted in others*—Where the evidence at a trial is in part disbelieved, as to which part it is thought that the witnesses had committed perjury, it is unsafe to accept the evidence of those witnesses in other parts and to convict the prisoner thereon. *JASRAH SINGH v. QUEEN—EXPRESS*. I. L. R., 14 Cal., 164

WORKING FOR GAIN.

See CASES UNDER JURISDICTION—CASES OF JURISDICTION—WORKING, CARRYING ON BUSINESS, OR WORKING FOR GAIN

WORKMAN.

See ACT XIII OF 1870

[3 B. L. R., A. Cr., 33]

I. L. R., 7 Mad., 100

I. L. R., 7 Bom., 370

I. L. R., 10 Bom., 66

WRITTEN STATEMENT.

See ADMISSIBILITY—ADMISSIBILITY IN STATEMENTS AND DEPOSITIONS

[B. L. R., Sup. Vol., 604]

I. L. R., A. C., 133

B. W. R., 67, 130, 200

10 W. R., 277

23 W. R., 220

I. L. R., 14 Fem., 610

See EVIDENCE—WRITTEN STATEMENTS

[14 W. R., 473]

I. L. R., 15 Mad., 22

Denial of title in—

See FALSE FIDELITY—WRITTEN STATEMENTS

[I. L. R., 6 All., 220]

WRITTEN STATEMENT—continued.

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE.

[I. L. R., 13 Cal., 98
I. L. R., 15 Mad., 123

1. ——— Form and contents of written statement—*Civil Procedure Code, 1859, s. 123*—*Defendant's written statement—Variance between pleading and proof.*—S. 123 of the Civil Procedure Code contemplated that a defendant should, in his written statement, set forth the case he intends to make at the trial. The rule followed in *Eshenchunder Singh v. Shamachurn Bhutto*, 11 Moore's I. A., 7; *Mohummud Zahoor Ali Khan v. Ruffa Koer*, 11 Moore's I. A., 468; and *Narainee Dossee v. Nurrohoury Mohuto*, Marsh., 70, that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who, in 1865, was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute by payment to the plaintiff of a sum of money, and purchased the land, and had since then remained in possession of it,—*Held* that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. *CHOVA KARA v. ISA BIN KHALIFA*

[I. L. R., 1 Bom., 209

2. ——— *Argumentative statement.*—A written statement should not be argumentative. *BISHEN SAHAYE SINGH v. BEER KISHORE SINGH* 8 W. R., 296

3. ——— *Offer without prejudice—Irrelevant matter—Act VIII of 1859, s. 124.*—An offer without prejudice should be omitted from the pleadings. In a suit where the written statement of the plaintiff contained letters relative to an offer made by the defendants without prejudice, the Court ordered, on the application of the defendant, that the paragraphs of the written statement relating to the offer should be struck out. *HALFORD v. EAST INDIAN RAILWAY COMPANY*

[12 B. L. R., Ap., 19

4. ——— *Irrelevant matter—Application to take written statement off the file.*—Where there was in a written statement matter irrelevant and improper, the Court, on application, ordered it to be taken off the file, with leave to file a fresh one in a week. Written statements should set out the *bona fide* nature of the defence, and nothing else. *KASUBALAL DEY v. TREMEARNE*

[3 B. L. R., Ap., 12

5. ——— *Taking off the file for irrelevancy—Relevant matter—Tender of written statement.*—The Court has jurisdiction to take a written statement off the file, for irrelevancy, until it is "tendered," which is when it is produced

WRITTEN STATEMENT—continued.

at the hearing of the suit. "Relevancy" is to be judged by what the defendant believed to be material to his case, and not whether it did in fact disclose a good defence to the action. *KESHAVJI NAIK v. NABARVANJI ARDESIR WADIA* . 10 Bom., 425

6. ——— *Inconsistent pleas—Plea allowed on appeal inconsistent with written statement.*—A Hindu wrote his will devising certain ancestral property to his wife, and on the following day he registered it and took the plaintiff in adoption. The testator died shortly afterwards. It was found that the plaintiff's natural father was aware of the dispositions contained in the will, and that the testator would not have adopted the plaintiff but for the consent of the natural father to those dispositions. The defendants who claimed under a gift from the wife had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in. *Held* that the defendants were not precluded from succeeding on the latter of these pleas notwithstanding it was inconsistent with their written statement. *Mahomed Buksh Khan v. Hoseini Bibi*, I. L. R., 15 Cal., 684; L. R., 15 I. A., 81, distinguished. *NARAYANASAMI v. RAMASAMI*

[I. L. R., 14 Mad., 172

7. ——— *Court-fee on written statement—Code of Civil Procedure (Act VIII of 1859), s. 120—Act X of 1877, s. 110—Court Fees Act (VII of 1870), s. 19.*—A written statement of his case, tendered by a party to a suit at any time before or at first hearing of the suit, is not liable to any Court-fee, and may be written on plain paper (s. 110 of Act X of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp duty (s. 19 of Act VII of 1870). *NAGU v. YEKNATH* . I. L. R., 5 Bom., 400

CHERAG ALI v. KADIR MAHOMED

[12 C. L. R., 367

8. ——— *Verification of written statement—Admission on record without verification.*—A written statement filed by the defendant should be verified, but if admitted on the record without verification, its allegation should be noticed and issues framed accordingly. *RADHACHURN-ROY v. MORAN & Co.* 13 W. R., 342

9. ——— *Verification on behalf of Corporation—Principal officer of Corporation or Company—Civil Procedure Code (1882), ss. 115 and 435—Practice—Waiver of objection to verification—Plaint, Verification of.*—The Civil Procedure Code by ss. 115 and 435 enables a principal officer of a Corporation to verify a plaint or written statement, and it is therefore not necessary that permission for that purpose should be obtained, but it should be shown in cases to which s. 435 applies that the person purporting to verify a plaint or a written statement on behalf of a Corporation or Company is a principal officer of the Corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to

WRITTEN STATEMENT—continued

that effect, verification in the usual form would probably be sufficient. Where suits had been filed against the East Indian Railway Company, the plaintiffs in which described the defendant Company as a Corporation, and an application was made for the admission on behalf of the defendant Company of written statements signed "The East Indian Railway Company by their constituted attorney and agent Richard Gardiner," who was decried in the verification as the "Agent of the defendant Company," and the written statements contained no statement to the effect that he was a principal officer of the defendant Company and able to dispose of the facts of the case.—*Held* that such evidence should be supplied by affidavit before the written statements could be admitted. The provisions in the Code relating to the verification of written statement, however, being intended for the protection of plaintiffs, their observance is not strictly enforced. *See* *East Indian Railway Co. v. Ramesh Chandra*, 23 Cal. 268.

RAJEEV v. EAST INDIAN RAILWAY CO.

[L. R., 23 Cal., 268]

10 ——— *Application to verify—Notice—Practice*—Where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side, although not absolutely necessary. *Finlay, Campbell & Co v. Steele*

[1 Ind. Jur., N. R., 39]

11 ——— *Application to verify by agent—Notice*—The Court will allow a written statement to be verified by the constituted attorney of the party without notice to the other side. *Ovando, O'Brien & Co v. Steele*

[1 Ind. Jur., N. R., 40]

12 ——— *Filing written statement—Time for filing*—Under the Code of Civil Procedure, a plaintiff cannot file a written statement after having seen that of the defendant, and by way of rejoinder thereto. *James Rax Ben alias Jatin Chandra Deb v. Jam Lochan Medrick*

[5 W. R., 56]

13 ——— *Filing and verifying written statement on behalf of plaintiff—Civil Procedure Code, 1859, ss 29, 223*—The plaintiff in a suit went on a pilgrimage after he had been ordered to file a written statement, but without having filed it. Not having returned when the case was on the trial, his application, under ss 29 and 223 of Act VIII of 1859 for leave to verify and file a

14. ——— *Admission of written statements—Civil Procedure Code, 1859, ss 10, 122*—The admission of written statements of the parties on various dates, unless expressly called for by the

WRITTEN STATEMENT—continued.

Court, was held to be contrary to the provisions of ss 120 and 122 of the Civil Procedure Code, 1859. *Ali Nazeer alias Firdaus Ali v. Tokim Ali alias Mirza Nawab*

[W. R., 1894, 44]

15 ——— *Written statement by third party—Lower of Court*—A Court has no authority to receive a written statement in a suit from one who is not a party, or to permit such a person to appear at the hearing. *Bravovoyev v. Bravovoyev*

[23 W. R., 17]

16 ——— *Defendant neglecting to put in statement—Adjournment of case—Costs*—In the event of a defendant neglecting to furnish a written statement, the Court will examine him as to the grounds of his defence, and should it appear desirable that a written statement should be put in, the case will be adjourned for that purpose at the expense of the defaulting party. *Ramachandran v. Oriental Island Steam Navigation Company*

[2 Hyde, 60]

17 ——— *Additional written statement—Practice—Act VIII of 1859, s 122*—An application by the defendant for leave to file an additional written statement allowed on condition of the defendant paying the whole costs and furnishing a copy of the additional statement to the plaintiff free of charge. Distinction made between such application by a plaintiff and one made by a defendant. *Dasmaji Dasi v. Srinath Ghosh*

[3 B. L. R., Ap., 11]

18 ——— *Supplemental statements, Filing of*—Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing. *Mrs. Harnshaw Harnshaw v. New Brunswick Shipping & Wharves Company*

[L. R., 4 B. R., 576]

19 ——— *Civil Procedure Code, 1859, s 122*—A Court was held not to have done wrong in admitting a supplemental written statement which it had called for under s 122, Civil Procedure Code, 1859, which did not add to or vary the plaintiff's claim. *Jamachandran v. Harnshaw*

[11 W. R., 71]

20 ——— *Statement on pleading plaintiff*—A written statement which was in explanation of the plaintiff's pleading a new case was allowed to be put in by the plaintiff after evidence was taken, and the defence set aside. *James Rax Ben v. Jam Lochan Medrick*

[23 W. R., 377]

21 ——— *Amendment of written statement—Furnishing to other party—Practice*—The defendant, being in the ignorance of the true facts, did not file a written statement, certain sums paid by them to the plaintiff

RAM [L. R., 24 B. R., 400]

WRITTEN STATEMENT—*continued.*

See LANDLORD AND TENANT—FORFEITURE
—DENIAL OF TITLE.

[I. L. R., 13 Calc., 98
I. L. R., 15 Mad., 123]

1. ——— Form and contents of written statement—*Civil Procedure Code, 1859, s. 123—Defendant's written statement—Variance between pleading and proof.*—S. 123 of the Civil Procedure Code contemplated that a defendant should, in his written statement, set forth the case he intends to make at the trial. The rule followed in *Eshenchunder Singh v. Shamachurn Bhutto*, 11 *Moore's I. A.*, 7; *Mohummud Zahoor Ali Khan v. Rutta Koer*, 11 *Moore's I. A.*, 468; and *Naraince Dossee v. Nurroohurry Mohuto*, *Marsh.*, 70, that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who, in 1865, was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute by payment to the plaintiff of a sum of money, and purchased the land, and had since then remained in possession of it,—*Held* that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. *CHOYA KARA v. ISA BIN KHALIFA*

[I. L. R., 1 Bom., 209]

2. ——— *Argumentative statement.*—A written statement should not be argumentative. *BISHEN SAHAYE SINGH v. BEER KISHORE SINGH* 8 W. R., 296

3. ——— *Offer without prejudice—Irrelevant matter—Act VIII of 1859, s. 124.*—An offer without prejudice should be omitted from the pleadings. In a suit where the written statement of the plaintiff contained letters relative to an offer made by the defendants without prejudice, the Court ordered, on the application of the defendant, that the paragraphs of the written statement relating to the offer should be struck out. *HALFORD v. EAST INDIAN RAILWAY COMPANY*

[12 B. L. R., Ap., 19]

4. ——— *Irrelevant matter—Application to take written statement off the file.*—Where there was in a written statement matter irrelevant and improper, the Court, on application, ordered it to be taken off the file, with leave to file a fresh one in a week. Written statements should set out the *bonâ fide* nature of the defence, and nothing else. *KASUBAL DEY v. TREMEARNE*

[3 B. L. R., Ap., 12]

5. ——— *Taking off the file for irrelevancy—Relevant matter—Tender of written statement.*—The Court has jurisdiction to take a written statement off the file, for irrelevancy, until it is "tendered," which is when it is produced

WRITTEN STATEMENT—*continued.*

at the hearing of the suit. "Relevancy" is to be judged by what the defendant believed to be material to his case, and not whether it did in fact disclose a good defence to the action. *KESHAVJI NAIK v. NASARYANJI ARDESIR WADIA* . . . 10 Bom., 425

6. ——— *Inconsistent pleas—Plea allowed on appeal inconsistent with written statement.*—A Hindu wrote his will devising certain ancestral property to his wife, and on the following day he registered it and took the plaintiff in adoption. The testator died shortly afterwards. It was found that the plaintiff's natural father was aware of the dispositions contained in the will, and that the testator would not have adopted the plaintiff but for the consent of the natural father to those dispositions. The defendants who claimed under a gift from the wife had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in. *Held* that the defendants were not precluded from succeeding on the latter of these pleas notwithstanding it was inconsistent with their written statement. *Mahomed Buksh Khan v. Hoseini Bibi*, I. L. R., 15 Calc., 684; I. L. R., 15 I. A., 81, distinguished. *NABAYANASAMI v. RAMASAMI*

[I. L. R., 14 Mad., 172]

7. ——— *Court-fee on written statement—Code of Civil Procedure (Act VIII of 1859), s. 120—Act X of 1877, s. 110—Court Fees Act (VII of 1870), s. 19.*—A written statement of his case, tendered by a party to a suit at any time before or at first hearing of the suit, is not liable to any Court-fee, and may be written on plain paper (s. 110 of Act X of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp duty (s. 19 of Act VII of 1870). *NAGU v. YEKNATH* . . . I. L. R., 5 Bom., 400

CHEBAG ALI v. KADIR MAHOMED

[12 C. L. R., 367]

8. ——— *Verification of written statement—Admission on record without verification.*—A written statement filed by the defendant should be verified, but if admitted on the record without verification, its allegation should be noticed and issues framed accordingly. *RADHACHURN ROY v. MORAN & Co.* 13 W. R., 342

9. ——— *Verification on behalf of Corporation—Principal officer of Corporation or Company—Civil Procedure Code (1882), ss. 115 and 435—Practice—Waiver of objection to verification—Plaint, Verification of.*—The Civil Procedure Code by ss. 115 and 435 enables a principal officer of a Corporation to verify a plaint or written statement, and it is therefore not necessary that permission for that purpose should be obtained, but it should be shown in cases to which s. 435 applies that the person purporting to verify a plaint or a written statement on behalf of a Corporation or Company is a principal officer of the Corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to

WRITTEN STATEMENT—concluded.

22. ———— **Objections to written statement—Sunday—"Four clear days"—Civil Procedure Code, 1859, s. 121**—A written statement has been "four clear days" upon the file in compliance with the rule 28, although the last of such days is a Sunday. Objections to the written statement on the ground stated in s. 121 of Act VIII of 1859 cannot be taken when the suit is ripe for hearing. *SMALLWOOD v. PARRY* **Cor., 39**

23. ———— **Raising question not raised in written statement—Mission to raise equitable defence in written statement.**—A defendant is not precluded from availing himself of any equity which might arise out of the facts proved at the trial, merely because he has not raised that equity on the face of his written statement. *GORK CHENDER BISWAS v. GRESH CHUNDER BISWAS* **[7 W. R., 120]**

24. ———— **Raising question of jurisdiction—Fresh issue—Practice.**—Where a question of jurisdiction had not been raised in a written statement, the defence therein being limited to a statement of the merits of the case, an application to raise an issue as to jurisdiction was granted on payment of the costs of the adjournment to enable the plaintiff to meet the case set up. *ROHREXOLLA v. PALMER* **Cor., 8**

WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

See LIMITATION ACT, 1877, ART. 109.
[I. L. R., 24 Calc., 413]

See RES JUDICATA—PARTIES—SAME PARTIES OR THEIR REPRESENTATIVES.
[I. L. R., 14 Bom., 408]

WRONGFUL ATTACHMENT.

See ATTACHMENT—LIABILITY FOR WRONGFUL ATTACHMENT.

**[I. L. R., 17 Calc., 436
L. R., 17 I. A., 17]**

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

**[3 B. L. R., A. C., 413
I. L. R., 3 Bom., 74
7 Mad., 235]**

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS.

See CASES UNDER EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.

WRONGFUL CONFINEMENT.

See COMPOUNDING OFFENCE.

[I. L. R., 21 Calc., 103]

See UNLAWFUL COMPULSION.

[I. L. R., 19 Calc., 572]

See WRONGFUL RESTRAINT.

[I. L. R., 12 Bom., 377]

WRONGFUL CONFINEMENT—continued.

1. ———— **What amounts to imprisonment—Suit for damages.**—The detaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will. *PARAN KUSAM NARABAYA PANTULU v. STEART* **2 Mad., 396**

2. ———— **Nature of confinement—Penal Code (Act XLV of 1860), s. 346.**—In order to render a person liable under s. 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered. **IN THE MATTER OF THE PETITION OF SREENATH BANERJEE, EMPRESS v. SREENATH BANERJEE** **[I. L. R., 9 Calc., 221]**

3. ———— **Unlawful commitment by person in authority—Illegal arrest—Penal Code, s. 220—Presumption of malice.**—Proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy the requirements of s. 220 of the Penal Code. *REG. v. NARAYAN BABAJI* **8 Bom., 346**

4. ———— **Obtaining arrest of wrong person—Liability of person setting Court in motion.**—Where a wrong person is arrested and imprisoned under a decree to which he is no party, the person setting the Court in motion is not liable for such arrest and imprisonment if he did not obtain the process fraudulently or improperly. *BHEEMA CHARLU v. DONTI MURTI* **8 Mad., 38**

5. ———— **Illegal arrest—Malice.**—Four persons, two of them police constables and two village officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. *Held* a good conviction. **ANONYMOUS** **5 Mad., Ap., 24**

6. ———— **Wrongful restraint—Penal Code, ss. 339, 340, 342—Malice.**—Malice is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Indian Penal Code (Act XLV of 1860). The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed. The accused as abkari inspector visited a toddy shop where the complainant and one D were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed, the accused made an inquiry, in the course of which the complainant made certain statements implicating his fellow-servant. The accused thereupon resolved to prosecute D and make the complainant a witness in the case. In order to prevent him being tutored, the accused ordered his

WRONGFUL CONFINEMENT—continued.

made by him before the accused. He was then allowed to go away. The accused prosecuted D, and in the course of his trial admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night. After the termination of D's trial the complainant charged the accused with wrongful confinement under s. 342 of the Indian Penal Code. The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing, and that he had of his own accord stopped in his camp during the night. The trying Magistrate held this plea proved, and discharged the accused under s. 253 of the Code of Criminal Procedure (Act X of 1882). The Sessions Judge held that though the accused had detained the complainant in his camp during the night, still he was not guilty of any offence under the Penal Code, as he had acted without malice and to the best of his judgment. Held by the High Court on revision that the mere circum-

7. Wrongful arrest—Penal Code (Act XLV of 1860), s. 342—Criminal Procedure Code (1892), s. 84—Offence committed by a British subject in foreign territory—Powers of the police to arrest for such offence without a warrant—S. 84 of the Criminal Procedure Code (Act X of 1892) does not empower a police officer to arrest, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognisable offence committed outside British India. It was a

Thereupon he obtained an order from the District Magistrate of Belgaum dated the 15th November

officer from Sangli State came to Belgaum with a warrant issued by the Sangli Court for the arrest of M on a charge of criminal breach of trust. The chief constable thereupon directed M's arrest. He brought to the notice of the chief constable the District Magistrate's order of the 15th November 1901, but he was detained in custody till the matter was reported to the first class Magistrate, who ordered his release. In the meantime the complainant filed against M in the Sangli State was dismissed without requiring his extradition. He thereupon prosecuted the chief constable on a charge of wrongful arrest and wrongful confinement. Held that the chief constable had no power to arrest the complainant without a warrant.

WRONGFUL CONFINEMENT—continued.
and that he was guilty of the offence of wrongful confinement under s. 342 of the Penal Code. IV as **MURKUND BART VETHE**. I L R, 10 Bom., 72

WRONGFUL CONVERSION

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—Torts

I L R, 4 Cal., 110
5 Bom., O. C., 140
I L R, 10 All., 133

See OATH OF PROBITY—WRONGFUL CONVERSION

7 W. R., 280

See PLEDGE AND FIDELITY

I L R, 11 Cal., 322
L R, 10 I. A., 60

WRONGFUL DETENTION.

Detention of accused by Police Inspector—Criminal Procedure Code, 1872 s. 121—Jee OLOVER J.—Western Sub-Inspector of Police is charged with having detained prisoners for twenty-four hours if it is not necessary for the Crown to prove that he detained them with a guilty knowledge, as s. 121, Act X of 1872 imperatively lays down that accused persons are not to be detained beyond that time except under special order of the Magistrate which was not obtained in this case. **QUEEN v. BASOORAM DASS**

[10 W. R., Cr., 36]

WRONGFUL DISMISSAL.

See CASES UNDER MASTER AND SERVANT

Suit for, against Government.

See GOVERNMENT 7 H. L. R., 689

WRONGFUL DISTRAINT

See BENEFICIAL PEST ACT (VIII of 1872), s. 27

3 H. L. R., App., 74
6 W. R., Act X., 7, 31
H. W. R., 102
March, 294
16 W. R., 461
3 H. L. R., A. C., 291
7 W. R., 41

See BENEFICIAL PEST ACT (VIII of 1872) s. 100

[March, 470]

3 W. R., Act X., 170

See JURISDICTION OF CIVIL COURTS—LAW AND EVIDENCE—TORTS

I L R, 11 All., 400

See MARCHES PEST ACT s. 7

I L R, 20 Mad., 440

See SERVANTS—DISTRAINT

[23 W. R., Cr., 40]

See EVIDENCE

8 Mad., App., 11

I L R, 13 Mad., 149

See TRESPASS—DISTRAINT

[23 W. R., Cr., 40]

WRONGFUL DISTRRAINT—continued.

1. ——— Cutting and carrying away crops—*Persons put in possession in execution of decree.*—Certain patnidars who, in execution of a decree for khas possession, had been put in nominal possession of their lands, instead of ousting the raiyats allowed them to cultivate, and when they had cultivated cut and carried away their crops. *Held* that the act of the patnidars was an abuse of the law of distraint, and rendered them liable for damages. *ADOR MOHUN CHUCKERBUTTY v. THAKOOR MONEE DABEE* 10 W. R., 70

2. ——— Crops, Seizure of—*Act X of 1859, ss. 142 and 143—Trespass.*—Certain sub-lessees sued in the Collector's Court the zamindar and others employed by him for the value of crops seized and carried away, under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. *Held* that ss. 142 and 143 of Act X of 1859 applied to the case. S. 143, Act X of 1859, contemplated not only the case of a person who professes to follow the provisions of the law, though he has no power to distrain, but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons were considered by that section as trespassers, and were liable to the penalty of trespass, in addition to damages which may be awarded against them by the Revenue Court. *RADHA MOHAN NASKAR v. JADUNATH DASS* [3 B. L. R., A. C., 261: 12 W. R., 68

3. ——— Person acting without authority—*Act X of 1859, s. 143—Trespasser.*—S. 143, Act X of 1859, did not apply when a distrainer acted without the authority of the superior holder. In such a case he was a mere trespasser. *ROWSHUN v. BHOLANATH DOSS* 5 W. R., Act X, 67

4. ——— Suit for damages for illegal distraint—*Tort—Non-joinder of parties—Parties in actions of tort.*—A suit for compensation for illegal distraint of crops was brought by one of two persons jointly entitled to the crops distrained. Objection being taken at a late stage of the case on the ground of non-joinder of a party, that party was in his own application added as a plaintiff. *Held* that the rule that persons having the same cause of action must sue jointly, does not apply to actions on tort in every case in which persons have been damaged by the same tortious act. If the objection of non-joinder of party in an action of tort be not taken at the time and in the way provided by law, the defendant is liable to such portion of the damages only as have been incurred by the plaintiff who originally brought the suit. *JAGDEO SINGH v. PADARATH AHIE* I. L. R., 25 Calc., 285

5. ——— Persons removing property under rent-law—*Procedure—Penal Code, s. 379.*—Persons removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Bengal Act VIII of 1869. *IN THE MATTER OF AGHANI. AGHANI v. BHAGI HALWAI* 8 C. L. R., 204

WRONGFUL DISTRRAINT—concluded.

6. ——— Right to sue to set aside wrongful distraint—*Right of landlord against trespasser.*—A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful distraint. *HORBO NARAIN v. SHOODHA KRISHTO BERAH* [I. L. R., 4 Calc., 890: 4 C. L. R., 32

7. ——— Right to damages for wrongful distraint—*Beng. Act VIII of 1869, ss. 69, 78—Liability to suit for damages.*—When, on the one hand, a raiyat institutes a suit to contest the demand of a distrainer, the Court has no option, but must adjudicate upon the demand. If, on the other hand, the distrainer has distrained "otherwise than according to the provisions of the Rent Act," he has done so at his peril, and rendered himself liable to an action for damages by the owner of the distrained property. *TABINEE KANT LAHIREE CHOWDHRY v. RAJESHORE TONTRY* 24 W. R., 334

8. ——— Right to damages—*Act X of 1859, s. 142—Suit to contest distraint—Onus of proof—Damages.*—In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of jumma; if thereupon the tenant pleads payment and payment is denied, the onus is on the tenant to prove his allegation. Before a tenant can obtain any decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained. *OOJAN DEWAN v. PRANNATH MUNDUL* 8 W. R., 220

9. ——— Onus of proof—*Suit for damages for wrongful distraint—Act X of 1859, s. 143.*—In order to maintain a suit under s. 143, Act X of 1859, it was necessary for the plaintiff to prove that the defendant in making the distress was acting not only without right, but without anything to justify him in supposing that he had a right to distrain—a mere trespasser without any reasonable foundation for the claim set up. *RAYE KUMUL DOSSEE v. JHOROO MOLLAH* 15 W. R., 543

See JOYLOLL SHEIKH v. BROJONATH PAUL CHOWDHRY 9 W. R., 162

10. ——— Suit on account of property damaged by wrongful distrainer—*Act X of 1859, s. 142—Damages for vexatious distraint, Power of Court to award.*—When a suit had been brought under s. 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court was not competent to award damages for vexatious distraint. Such damages were properly awarded by the Collector under s. 138, in a suit to contest the distrainer's demand. *NONKOO RAM v. WOJOGUR ROY* 5 W. R., Act X, 68

11. ——— Procedure—*Beng. Act VIII of 1869, s. 101—Proceedings against persons wrongfully distraining.*—When proceedings are taken before a Munsif under Bengal Act VIII of 1869, s. 101, he is bound, first, to inquire whether an offence has been committed, and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. *PREM CHAND LAHA v. ADDITO DOSS* 20 W. R., 445

WRONGFUL GAIN OR LOSS

See THEFT . I. L. R., 15 Bom., 344
[I. L. R., 18 All., 89]
I. L. R., 22 Calc., 669, 1017
I. L. R., 25 Calc., 410

WRONGFUL DISTRRAINT—continued.

1. ——— Cutting and carrying away crops—*Persons put in possession in execution of decree.*—Certain patnidars who, in execution of a decree for khas possession, had been put in nominal possession of their lands, instead of ousting the raiyats allowed them to cultivate, and when they had cultivated cut and carried away their crops. *Held* that the act of the patnidars was an abuse of the law of distraint, and rendered them liable for damages. *ADOR MOHUN CHUCKERBUTTY v. THAKOON MONER DARR* 10 W. R., 70

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9. ——— Onus of proof—*Suit for damages for wrongful distraint—Act X of 1859, s. 143.*—In order to maintain a suit under s. 143, Act X of 1859, it was necessary for the plaintiff to prove that the defendant in making the distress was acting not only without right, but without anything to justify him in supposing that he had a right to distrain—a mere trespasser without any reasonable foundation for the claim set up. *RAYE KUMUL DOSSEE v. JHOROO MOLLAH* 15 W. R., 543

See *JOYLOLL SHEIKH v. BROJONATH PAUL CHOWDHRY* 9 W. R., 162

10. ——— Suit on account of property damaged by wrongful distrainer—*Act X of 1859, s. 142—Damages for vexatious distraint, Power of Court to award.*—When a suit had been brought under s. 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court was not competent to award damages for vexatious distraint. Such damages were properly awarded by the Collector under s. 138, in a suit to contest the distrainer's demand. *NONKOO RAM v. WOJOGUE ROY* 5 W. R., Act X, 68

11. ——— Procedure—*Beng. Act VIII of 1869, s. 101—Proceedings against persons wrongfully distraining.*—When proceedings are taken before a Munsif under Bengal Act VIII of 1869, s. 101, he is bound, first, to inquire whether an offence has been committed, and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. *PREM CHAND LAHA v. ADDITO DOSS* 20 W. R., 445

WRONGFUL GAIN OR LOSS

See THEFT . I L R, 15 Bom, 344
 I L R, 18 All, 88
 I L R, 22 Calc, 669, 1017
 I L R, 25 Calc, 416

WRONGFUL LOSS

See MISCHIEF . 3 B I L R, A Cr, 17
 I L R, 3 Calc, 573
 I L R, 12 Calc, 55, 660
 I L R, 7 Bom, 126

WRONGFUL POSSESSION.

— Trespasser—Sums paid during wrongful possession, right to recover—Where a person has wrongfully taken possession of an estate and held it adversely to the true owner, and has,

paid, even though such payments may have enured to the benefit of the true owner, but must be content to bear the burden of his own wrong **TILUCK CHAND v SOUDAMINI DASI**
 (I L R, 4 Calc, 566 3 C I R, 456

WRONGFUL RESTRAINT.

See COMPOUNDING OFFENCE
 I L R, 21 Calc, 103

See MISCHIEF I L R, 12 Calc, 55

See WRONGFUL CONFINEMENT
 I L R, 13 Bom, 376

1 ————— **Penal Code, ss. 339, 340, 342**
—Police officer, Conduct of.—In a case of a police officer charged under Penal Code, s 342 where there was no malice, no intention of doing an act of the nature spoken of in s 339 or 340, and no voluntary obstruction or restraint, though there was

2 ————— **s 339—Refusal to let person go until he gave bail**—Where a police officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code **SHRO SHURN SANAI v. NAHOMED FAZIL KHAN**
 (10 W. R., Cr, 20

3 ————— **Police keeping witness in custody under surveillance**—Where the police kept a witness under surveillance for four days, the High Court held, under the circumstances, that there was nothing in law to warrant them in keeping him so in restraint **BAJRANGI LALL v. EMPRESS** . 4 C W. N., 49

WRONGFUL RESTRAINT—continued

4 ————— **Restraint and taking money on false plea**—Where the accused prevented the complainants from proceeding in a certain direction with their carts and exacted from them a sum of money on a false plea—**Held** the accused were guilty of wrongful restraint and not theft **JOWAHIR SHAH v. GRIDHARER CHOWDHRY**
 (10 W. R., Cr, 35

5 ————— **Penal Code, ss. 79 and 341—**

... talki promittedly, of rank, of s 79 petitioners GOWALA
 I L R, 11 Calc, 895

KANHAJI GOALA v. QUEEN-EMPRESS

(1 C W. N., 665

6 ————— **Penal Code, ss 52, 79, 99, and 342—Act done by a person by mistake of fact in good faith believing himself justified by law—Right of private defence against acts of a public servant acting bona fide under colour of his office—Act XII of 1856, s 85—Reasonable suspicion—Obstruction to a police officer while acting in execution of duty—Arrest—Criminal Procedure Code (Act X of 1892), s 54**—On the 29th December 1867, the accused, a police constable, was on duty at a temporary post near the Arthur Crawford Market His turn of duty lasted from 4 to 7 A M between 6 AM and 7 AM he saw the complainant carrying under his arm three pieces of cloth Suspecting that the cloth was stolen property, he went up to the complainant and questioned him In answer to one of the questions the complainant stated that the cloth was made in England The accused, noticing that each piece bore Gujarathi marks and

complainant because he had assaulted him. The Inspector, seeing that the complainant was an old

was that the complainant had assaulted the accused,

WRONGFUL RESTRAINT—concluded.

and had been on that account arrested and kept in confinement until released by the Inspector of Police. The Magistrate found that there was no justification for the suspicion which the accused professed to entertain; that there were no reasonable grounds for questioning the complainant about the cloth in his possession, and that the scuffle was caused solely by the action of the accused in treating the complainant without any valid reason as a suspected thief. The Magistrate convicted the accused of wrongful confinement under s. 342 of the Indian Penal Code (Act XLV of 1860), and sentenced him to four months' rigorous imprisonment. *Held* by the High Court that the conviction was wrong. The accused, having, under the circumstances of the case, an honest suspicion that the cloth in the possession of the complainant was stolen property, was justified in putting questions to the complainant, the answers to which might clear away his suspicions, and having received answers which were not, in his opinion, satisfactory, he acted under a *bona fide* belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant, not for the purpose of causing annoyance or from idle curiosity, but in order to clear up his suspicions, was an indication of good faith, as defined in s. 52 of the Indian Penal Code (Act XLV of 1860). He was therefore protected by s. 79 of the Code. Even though the act of the accused in detaining the cloth might not have been strictly justifiable by law,—that is, even though there might not have been a complete basis of fact to justify a reasonable suspicion that the cloth was stolen property,—still the complainant had no right of private defence under s. 99 of the Code, as the accused was a public servant acting in good faith under colour of his office, and his act was not one which caused the apprehension of death or of grievous hurt. The complainant was not justified in refusing to allow the accused to inspect the cloth, in snatching it from his hands, and in scuffling with him. He was therefore legally arrested, under s. 54, cl. 5, of the Criminal Procedure Code (Act X of 1882), for obstructing a police-officer while acting in the execution of his duty. **BHAWOO JIVAJI v. MULJI DAYAL** I. L. R., 12 Bom., 377

WRONGFUL SEIZURE IN EXECUTION.

See CIVIL PROCEDURE CODE, 1882, s. 244
(ACT XXIII OF 1861, s. 11)—QUESTIONS
IN EXECUTION OF DECREE.

[3 N. W., 187
2 Agra, 105
5 Mad., 185
12 B. L. R., 201, 203 note, 207 note, 208 note
12 W. R., 85
3 B. L. R., A. C., 413
I. L. R., 22 Calc., 483

See DAMAGES—MEASURE AND ASSESSMENT
OF DAMAGES—TORTS Marsh., 495
[3 Agra, 202
3 B. L. R., A. C., 413
I. L. R., 3 Bom., 74
7 Mad., 235

WRONGFUL SEIZURE IN EXECUTION—concluded.

See CASES UNDER EXECUTION OF DECREE
—LIABILITY FOR WRONGFUL EXECUTION.

See MALICIOUS PROSECUTION.
[I. L. R., 19 Bom., 485

See CASES UNDER SALE IN EXECUTION OF
DECREE—WRONGFUL SALES.

Y**YEAR.****Agricultural—**

See N.-W. P. RENT ACT (XVIII OF
1873), s. 94 I. L. R., 1 All., 512

Z**ZAMINDAR.**

See GRANT—CONSTRUCTION OF GRANTS.
[I. L. R., 9 Mad., 307
I. L. R., 13 I. A., 32

See GRANT—POWER TO GRANT.
[B. L. R., Sup. Vol., 75, 774

**Kabuliat between Government
and—**

See SPECIFIC PERFORMANCE—SPECIAL
CASES I. L. R., 3 Calc., 464

Liability of, for repairs of tank.

See CONTRACT ACT, s. 70.
[I. L. R., 18 Mad., 88

Proof of title of—

See OWNERSHIP, PRESUMPTION OF.
[I. L. R., 15 Mad., 101
I. L. R., 18 I. A., 149

**Purchase by, of patni interest,
Effect of—**

See MERGER 3 C. L. R., 159
[I. L. R., 19 Calc., 760

ZAMINDAR, DUTY OF—

Ancient tanks—Negligence—Statutory powers—Liability for damage occasioned by overflow of tanks.—The public duty of maintaining ancient tanks, and of constructing new ones, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, devolved upon zamindars. Such zamindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them. The rights and liabilities

ZAMINDAR, DUTY OF—concluded.

of such zamindars with regard to these tanks are analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. A zamindar, if the banks of any such tank in his possession are washed away by an extraordinary flood without negligence on his part, is not liable for damage occasioned thereby. **MADRAS RAILWAY COMPANY v. ZAMINDAR OF CARVETINAGARAM** 14 B. L. R. 209; 22 W. R. 279 (L. R., I L. A., 364)

S. C. in lower Courts. **MADRAS RAILWAY COMPANY v. ZAMINDAR OF KAVETINUGUR**

[5 Mad., 139]

and after remand 6 Mad., 180

ZAMINDAR, POWER OF—

1. ——— Power to grant lease—Lease
granted by zamindar to tenant.

Government was not bound to take any action in the matter.

2. ——— Hindu law—Authority to grant lease as manager and owner—

wise than *bona fide*. **RAMANADAN v. SRINIVASA MURTHI** I. L. R., 2 Mad., 80

3. ——— Power to alter boundaries—Effect of arrangement altering boundary without sanction of Government.—Zamindars have no autho-

[W. R., 1864, 355]

4. ——— Power to charge estate with personal debts.—A decree for possession of certain land with *waslat* obtained by a zamindar of an estate, as such, cannot be pledged by him as security for a personal debt, nor for such a debt can the estate be made liable, nor his successor be held responsible. **NIMAYE CHURN SEN v. RAMMOHAR BEEBER**

[10 W. R., 152]

ZAMINDAR, RIGHTS OF—

See **MADRAS REGULATION XIV of 1802.**

[14 B. L. R., 115]

L. R., I L. A., 268, 292

See **WASTE LANDS I. L. R., 10 All., 172**

1. ——— Nature of zamindari estate—Power to deal with estate.—A zamindar's estate is

ZAMINDAR, RIGHTS OF—continued.

[2 Mad., 128]

2. ——— Collections of rent—Claim to intermediate tenures—Onus of proof.—A zamindar has as such a *prima facie* right to the gross collections from all the mouzahs within his zamindari. It is for parties setting up an intermediate tenure to prove their grant. **PRABHAT SEN v. DURGATBARAD TAWARI**

[2 B. L. R., P. C., 111; 12 W. R., P. C., 6; 12 Moore's I. A., 288]

3. ——— Right to rent—Payment of revenue by zamindar.—The right of a zamindar to exact from a tenant payment of rent for a certain piece of land in no way depends on whether he does or does not pay revenue for that land. **JOTENDRO MOHUN TAGORE v. AYMUN BEEBER**

[1 C. L. R., 366]

4. ——— Liability for rent—Co-sharer in talukh.—Held that a zamindar, by becoming a co-sharer in the talukh, does not lose his right to the joint responsibility of all the other co-sharers for the due payment of the rent, he only becomes bound to make an allowance for that portion which he as a co-sharer ought to pay. **GOBINDO COOMAR CHOW PHRY v. MANSON**

[15 B. L. R., 56; 23 W. R., 152]

5. ——— Compensation—Compensation to *patindar* for loss sustained by erection of works by railway company.—A zamindar who receives his rents in full is not entitled to participate in compensation received by his *patindar* for loss suffered by the latter in consequence of works being erected on land included in the *patni*. **MAHARAJAN OF BUDWAN v. WOONA SOONDURER DOSSEE**

[10 W. R., 12]

6. ——— Sale in execution of decree—Custom—Charge on sale proceeds.—Where a sale took place in execution of a decree, and it was proved by custom that the zamindar's right extended to one fourth of the sale-proceeds in cases of involuntary sale, held that the zamindar had a right to recover the fourth share of the proceeds of sale from the judgment-creditor, who in truth reserved the sale price. The zamindar's right attached to the sale proceeds, and was a prior charge upon the proceeds. **BYI NATH PESHAD v. MAHOMED FUZZ HOSSEIN**

[2 Agra, Part II, 204]

7. ——— Custom—Right to share of sale-proceeds—Calculation of amount—Zamindar's Aug.—Where by custom the zamindar is entitled to a quarter share of the sale proceeds as his *hug* zamindari, he is entitled to recover it on the occasion of sales, either absolute or originally conditional, but subsequently becoming absolute by foreclosure, from the vendor and the purchaser, and the latter cannot be discharged from his liability by proving that he has paid all, including zamindar's

ZAMINDAR, RIGHTS OF—concluded.

dues, to the former, it being incumbent on him to see that the zamindar is satisfied in respect of his dues. *Held* further that, under the circumstances, the plaintiffs, the zamindars, were entitled to one-fourth from Rs 450, the principal amount repayable, and not from the amount ascertained at the time of foreclosure to be due to the mortgagee, including interest, inasmuch as the deed made no provision for payment of any sum as interest. **HEERA RAM v. DEO NARAIN SINGH . Agra, F. B., 63: Ed. 1874, 48**

8. ————— *Sale in execution of house in mohalla—Wajib-ul-urz—Liability of auction-purchaser—Right of zamindar to huq-i-chaharam.*—The zamindars of a certain mohalla claimed from the purchaser of a house situated in such mohalla, which had been sold in execution of a decree, one-fourth of the sale-proceeds of such house, such purchaser being the holder of such decree. Such suit was based upon the terms of the wajib-ul-urz. That document stated, *inter alia*, that, when a house in such mohalla was sold, a cess called chaharam was received by such zamindars "according to the understanding arrived at between the seller and the zamindars." *Held* that such zamindars were not entitled under the terms of the wajib-ul-urz to one-fourth of the sale-proceeds; that the decree-holder, because he happened to have become the auction-purchaser, could not be regarded as the "seller," and it was only the "seller" who was liable; that the terms of the wajib-ul-urz were applicable only to private and voluntary sales, and not to execution-sales; and that, under these circumstances, the suit must be dismissed. **BENI MADHO v. ZAHURUL HAQ [I. L. R., 3 All., 797]**

9. ————— *Sale of zamindar's right—Right as tenant in another house.*—Where a zamindar's right is sold by auction, it does not follow that, by the sale of the zamindari right, he forfeits his tenant-right which he had in another patti in respect of a house. **RAM BUKSH SINGH v. PURDUMUN KISHORE . . . 2 Agra, Part II, 202**

ZAMINDAR AND RAIYAT.

See CASES UNDER BENGAL RENT ACT, 1869.

See CASES UNDER LANDLORD AND TENANT.

See CASES UNDER MADRAS RENT RECOVERY ACT, 1865.

See CASES UNDER RIGHT OF OCCUPANCY.

ZAMINDARI DAKS.

1. ————— *Beng. Act VIII of 1862—Effect of Act on liability of patnidars.*—Bengal Act VIII of 1862 did not relieve patnidars from their liability under the old laws of paying the zamindari dāk charges. **BISSONATH SIRCAR v. SHURNOMOYEE [4 W. R., 6]**

2. ————— *Liability of patnidar.*—Where the terms of a patni lease did not make the patnidar liable for the maintenance of

ZAMINDARI DAKS—concluded.

the zamindari daks, it was held that the patnidar was not liable for a tax which was imposed on the zamindar by Bengal Act VIII of 1862. **RAKHAI DOSS MOOKERJEE v. SHURNO MOYEE**

[6 W. R., 100]

3. ————— *Liability of patnidar.*—The provision in a pottah that if any item is laid upon the zamindar over and above the sudder jumma, the patnidar shall bear a rateable proportion of it, held not to include the charges connected with the zamindari dāk. **ROHINEE KANT ROY v. TIRIPOORA SOONDUREE DASSIA . 8 W. R., 45**

SARODA SOONDURY DEBIA v. WOOMA CHURN SIRCAR . . . 3 W. R., S. C. C. Ref., 17

ZAMINDARI DUES AND CESSES.**Suit for—**

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CESS.

[I. L. R., 1 All., 444]

ZAMORIN OF CALICUT.

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY.

[I. L. R., 21 Mad., 105]

See PENSIONS ACT, s. 12.

[I. L. R., 21 Mad., 105]

ZANZIBAR.

See CONSULAR COURT AT ZANZIBAR.

[I. L. R., 3 Bom., 58]

Consular Court at—

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[I. L. R., 20 Bom., 480]

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL.

[I. L. R., 3 Bom., 334]

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.

[I. L. R., 19 Bom., 741]

ZUR-I-PESHGI LEASE.

See ATTACHMENT—ALIENATION DURING ATTACHMENT . I. L. R., 18 All., 123

See DECREE—FORM OR DECREE—POSSESSION . I. L. R., 18 All., 440

See LEASE—ZUR-I-PESHGI LEASE.

See MORTGAGE—POSSESSION UNDER MORTGAGE.

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION.

[I. L. R., 24 Calc., 272]

L. R., 23 I. A., 158

1 C. W. N., 23

